HANDBOOK OF MORAL THEOLOGY

KOCH-PREUSS

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MORAL THEOLOGY
V

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A HANDBOOK OF MORAL THEOLOGY

BY

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VOLUME V

MAN'S DUTIES TO HIS FELLOWMEN

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PART I

MAN'S DUTIES TO HIS FELLOWMEN INDIVIDUALLY

CHAPTER I

THE FUNDAMENTAL VIRTUES GOVERNING MAN'S RELATIONS WITH HIS FELLOWMEN

SECTION 1

RESPECT

1. DEFINITION.—The respect which a Christian owes to his fellowman may be defined as a due acknowledgment of that fellowman's dignity as a human being and a Christian, and a just regard for the good qualities he possesses, especially those of the moral order.

True respect for one's fellowmen, like true self-knowledge and self-love, is based on supernatural Revelation.[1]

1 Matth. VI, 26, 30; VIII, 5 sqq.; X, 29 sqq.; XII, 12; XVI, 26; Mark II, 17; VII, 24 sqq.; Luke XIII, 16; XV, 4 sqq.; XIX, 1 sqq.; Gal. III, 27 sqq.; Col. III, 11.

2. The Duty of Respecting One's Fellowmen.—The precept commanding us to respect our fellowmen is frequently inculcated by the New Testament. Thus we are commanded to "love one another with the charity of brotherhood" [2] and to treat one another "with honor." [3] We are assured that whatever we do to any one of our brethren, even the least, we do to the Lord Himself.[4] The "new commandment" which Christ gave is that we should love one another as He loves us.[5] This commandment He repeated over and over.[6] We are to make no distinction between the strong and the weak, the rich and the poor.[7] "If you have respect to persons, you commit sin, being reproved by the law as transgressors," [8] says St. James.

Mutual respect between men, and especially between Christians, is a necessary foundation of true charity. To a considerable extent, of course, the respect we pay to our neighbor is gauged by his personal ability and his virtues, particularly by his honesty and fidelity. The external manifestation of this respect forms an important element of what is known as *public opinion.*

Nature demands that we honor our fellowmen

2 *Caritas fraterna, φιλαδελφια.*
3 Rom. XII, 10.
4 Matth. XXV, 40.
5 John XIII, 34; 1 Pet. II, 17.
6 John XV, 12, 17.
7 Jas. II, 1–9.
8 Jas. II, 9.

in proportion to their worth and dignity. This precept is enforced by Divine Revelation. We will quote but two passages. "Render therefore to all men their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honor to whom honor." [9] "Let the priests that rule well be esteemed worthy of double honor: especially they who labor in the word and doctrine." [10]

The respect we owe our fellowmen need not and should not blind us to their faults, much less to their moral unworthiness if they are wicked. Christ publicly condemned the scribes and Pharisees because of their hypocrisy and want of charity.[11] St. Paul says: "If any man love not our Lord Jesus Christ, let him be anathema, maranatha," [12] *i. e.,* let him be cut off from Christian fellowship,[13] and the same Apostle admonishes the Thessalonians: "If any one obeyeth not what we say by this letter, take note of him, and hold no intercourse with him, in order that he may be ashamed." [14] He adds, however: "Do not regard him as an enemy, but admonish

9 Rom. XIII, 7.

10 1 Tim. V, 17.—Cfr. F. von Holtzendorff, *Wesen und Wert der öffentlichen Meinung,* Munich 1879; A. Stöckl, *Das Christentum,* Vol. II, pp. 327 sqq.

11 Matth. XXIII, 13 sqq.

12 1 Cor. XVI, 22.

13 Cfr. C. Lattey, S. J., in the Westminster Version, III, 2, p. 33, note 3: "In the New Testament he is 'anathema' who is cut off from the Christian community (1 Cor. XVI, 22; Gal. I, 8–9), from Christ (Rom. IX, 3), or, as here [1 Cor. XII, 3], from God, and so under His curse. No one speaking thus of Christ can be moved by the Holy Ghost."

14 2 Thess. III, 14 sqq.

him as a brother," [15] meaning that the social and religious ostracism inflicted upon a contumacious Christian should be tempered by zeal for his eternal salvation.[16]

If a person whose conduct we are in duty bound to condemn holds an office in Church or State, we must distinguish between the office and its unworthy occupant;—no matter how deeply we may be disgusted with the latter, we must never lose respect for the former. This applies particularly to ecclesiastics. *"Petri dignitas etiam in indigno herede non deficit,"* says a medieval adage.

We violate the respect due to our fellowman if we despise him, or employ him as a means to a wicked end, or withhold from him the personal rights or prerogatives to which he is in justice entitled. The grievousness of the sin thus committed is gauged by the character of the right or prerogative involved, *e. g.*, liberty of conscience.

A particularly offensive sin against the precept here under consideration is involved in the grosser

15 2 Thess. III, 15.

16 C. Lattey, Thess., Westm. Version, p. 15.—Cfr. St. Augustine, *Epist.*, 153 (*al.* 54), n. 5: *"Non, ut opinor, magister ille caelestis impietatem nos diligere praecipit, quum praecipit, ut nostros diligamus inimicos, . . . quum procul dubio, si pie Deum colimus, inimicos atque odiis adversum nos acerrimis incitatos ac persecutores nisi impios habere non possimus. Num igitur diligendi sunt impii? Num impiis benefaciendum est? Num pro impiis etiam orandum est? Ita plane. Qui enim hoc praecipit, Deus est: nec tamen nos hoc pacto societati adiungit impiorum, quibus et ipse parcendo et vitam salutemque largiendo non utique sociatur."* (Migne, *P. L.*, XXXIII, 655).

forms of *slavery*. It is true that the treatment of slaves is usually softened by natural compassion and kindliness on the part either of the master or of public opinion, or by the precepts of religion; that the law has in some instances granted the wretched slaves a certain measure of protection, and that it is not necessary to assume that every slaveholder is a cruel tyrant. Yet the status of a slave is by its very definition not that of a person, but rather that of a brute beast or an inanimate object that is bought and sold according to the whims of its owner. Dr. Devas is undoubtedly right when he says that "slavery by its very nature encourages immorality, hinders proper family life among the slaves, gives the master an arbitrary power with which no man can be trusted, fosters the scorn of manual labor, as a degradation for the freeman, and thus is always a social evil, any incidental advantages which it may give being attainable by serfdom." [17]

Though slavery, at least in its cruder forms, has for the most part been abolished, it unfortunately still persists in an applied sense as an attribute of twentieth-century industrialism.

17 *Political Economy*, 3rd ed., pp. 529 sq.—Cfr. Leo XIII, *Epist. ad Episc. Brasil.*, 5 Maii 1888; P. Allard, Art. *"Slavery,"* in the *Catholic Encyclopedia*, Vol. XIV, pp. 36 sqq.; J. J. Fox, *ibid.*, pp. 39 sqq.; A. Ebeling, *Die Sklaverei von der ältesten Zeit bis auf die Gegenwart*, Paderborn 1899; J. E. Ross, C. S. P., *Christian Ethics*, N. Y. 1919, p. 328.

"In modern times," writes Archbishop Simar, "the working classes live under conditions similar to those of pagan antiquity. All too frequently the laborer is degraded to the level of a mere tool for money-making, and no regard is paid to his bodily health, his social and economic welfare, and his spiritual, religious, and moral development. The evils and dangers which threaten humanity in consequence of this social injustice have their fountain-head in un-Christian views and principles, and therefore cannot be successfully and permanently abolished unless Christianity is again allowed to govern all social relations. The fundamental postulate of reform is respect for the personal dignity of every man as a man and as a Christian, for in no other soil can true charity and its concomitant spirit of self-sacrifice thrive." [18]

The keynote of the famous Labor Encyclical of Leo XIII, *"Rerum Novarum,"* is the principle that conditions of labor shall be made more human and less servile, and that the worker be placed in a condition of greater economic freedom both as regards his security against want and the conditions of his labor. The worker is to be regarded as a human agent, not as a mere tool; and as one who has the right *by means of his labor* to achieve a wholesome human existence, since, as the Pope says, it is only by his labor that he can preserve and develop himself. His necessity gives him the right to such conditions of labor as will enable him to achieve a thoroughly human existence. Moreover, the same necessity demands that he should claim this right; since, as Leo XIII declares, "a

18 Simar, *Moraltheologie*, 3rd ed., p. 372.—Cfr. Th. Meyer, S. J., *Die christlich-ethischen Sozialprinzipien und die Arbeiterfrage*, 4th ed., Freiburg i. B. 1906; Reuter-Lehmkuhl, S. J., *Neoconfessarius*, pp. 214 sqq.; J. Biederlack, S. J., *Die soziale Frage*, 7th ed., pp. 206 sqq.

man cannot give up his soul to servitude." Yet that is just what he is required to do under the system now largely prevalent in modern industry.

Furthermore, as Fr. Cuthbert points out in a recent brochure, the laborer is not "relieved of that servitude merely by receiving a higher wage; he simply sells his soul at a higher rate, unless the essential conditions of servitude are abolished. To continue to blunt his mind and soul by excessive bodily labor, to go through the continuous monotony of a machine-existence, to be perpetually harassed by the insecurity of labor dependent on the arbitrary will of an employer; to have to work in circumstances degrading to body and soul—under such conditions labor cannot but be demoralizing, however high the rate of wage might be. The new conscious aim in labor organization, which puts human personality in the foreground and explicitly regards wages and material advantages as mere means to an end, has undoubtedly a higher human and ethical quality than was found in the purely materialistic schools of economics: and for that reason deserves the sympathetic attention of all Catholics. The fact that this new purpose on the part of the labor organizations is associated among certain sections with a policy of expropriation, hardly distinguished, if at all, from confiscation of the capitalist's property, must not blind us to the justice of the main purpose itself: nor is it helpful to the cause of the Catholic Church to regard merely the extravagances and more violently revolutionary forms of the movement and to ignore the saner teaching of those who regard an economic revolution as inevitable, but believe that, with reasonableness on all sides, a just and peaceful solution of the problem is possible. That the economic system must be radically changed in many ways, few will be found to doubt, who have given any

serious attention to the subject. Capitalism in the forms in which it has hitherto dominated the industrial world, is bound sooner or later to give way before the growing unity and consciousness of power among the workers; just as in the latter Middle Ages, feudalism had to give way before the growing power of the commercial class. The only question to-day is whether this radical economic change can be brought about peacefully by a mutual recognition of reasonable claims on the part of the employer and the worker, or whether a violent solution is inevitable. If either party refuses to treat with the other in a spirit of reasonableness and with intent to recognize the fundamental principles of justice underlying the situation, then violent revolution, in the opinion of sane and impartial observers, will surely come: and unfortunately on both sides there are those who are prepared to stake their all upon a violent issue. If that issue is to be avoided, it is needful that all who wish for a peaceful solution should unite in a careful and sympathetic consideration of the ethical questions involved. For, after all, the problem as it presents itself to-day, is primarily and ultimately an ethical problem. 'It is not merely discontent as to wages,' says H. S. Furniss,[19] 'but dissatisfaction with their lives as wage-earners, that lies at the heart of the trouble.' "[20]

Readings.—H. Th. Simar, *Lehrbuch der Moraltheologie,* pp. 371 sqq.—Grimm, *Die Ethik Jesu,* pp. 74 sqq.—I. Döllinger, *Heidentum und Judentum,* pp. 665 sqq.—A. Stöckl, *Das Christentum,* Vol. II, pp. 327 sqq.—P. Allard, *Les Esclaves Chrétiens depuis les Premièrs Temps de l'Église,* 3rd ed., Paris 1900.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 658 sqq.—

19 *The Industrial Outlook,* Intr., p. 16.

20 Fr. Cuthbert, O.S.F.C., *The Ethics of Labor,* N. Y. 1922, pp. 5 sqq.

A. Ebeling, *Die Sklaverei von der ältesten Zeit bis auf die Gegenwart,* Paderborn 1899.—V. Cathrein, S. J., *Moralphilosophie,* 5th ed., Vol. II, pp. 444 sqq.—P. Schanz, *Apologie des Christentums,* Vol. III, 3rd ed., pp. 618 sqq., 635 sqq.—A. Harnack, *Die Mission und Ausbreitung des Christentums,* Vol. I, 2nd ed., pp. 145 sqq.—Th. Meyer, *Institutiones Iuris Naturalis,* Vol. II, Freiburg i. B. 1900, pp. 71 sqq.—Idem, *Die christlich-ethischen Sozialprinzipien und die Arbeiterfrage,* 4th ed., Freiburg 1906.—Reuter-Lehmkuhl, *Neo-Confessarius,* pp. 214 sqq.—H. Biederlack, S. J., *Die soziale Frage,* 7th ed., pp. 206 sqq.—Fr. Cuthbert, O.S.F.C., *The Ethics of Labor,* N. Y. 1922.

SECTION 2

JUSTICE

1. DEFINITION.—The respect we owe our fellowman refers immediately to his person, whilst justice (*iustitia*) is concerned with the rights which belong to him by nature.[1]

Justice may be defined as a *habitual and constant disposition which inclines the will to give to every man his due or right* (*suum cuique*) *and, if necessary, to sacrifice one's own interests in favor of the common welfare.*[2] Justice is essentially a virtue that governs man's relations to others (*virtus ad alterum*).

2. DIVISION.—In view of the various relations of justice existing in society we may distinguish three species of this virtue:[3]

1 Cfr. Walter, *Naturrecht*, pp. 66 sqq.; J. Haring, *Der Rechts- und Gesetzesbegriff*, Graz 1899.

2 M. Cronin, *The Science of Ethics*, Vol. II, N. Y. 1917, pp. 81 sqq.—St. Ambrose, *De Offic.*, I, c. 24 (n. 115): *"Iustitia est, quae suum cuique tribuit, alienum non vindicat, utilitatem propriam neglegit, ut communem aequitatem custodiat."* (Migne, *P. L.*, XVI, 57).—St. Augustine, *De Civ. Dei*, I. XIX, c. 21, n. 1: *"Iustitia ea virtus est, quae sua cuique tribuit."* (*P. L.*, XLI, 649).—St. Bernard, *De Diversis*, s. 102, n. 1: *"Iustitia est virtus, quae suum cuique reddit."* (*P. L.*, CLXXXIII, 728).—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 58, art. 1: *"Iustitia est virtus, qua quis constanti et perpetuâ voluntate ius suum unicuique tribuit."*

3 Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 61, art. 1–2.

a) *Legal justice,* which defines the duties of the individual in relation to the social order. It is called legal (*iustitia legalis*) because these duties are generally determined by positive law.[4]

b) *Distributive justice,* which regulates the distribution by the State of burdens and rewards among its subjects (*iustitia distributiva secundum proportionalitatem*).[5]

c) *Commutative justice,* which governs the relations between men as private individuals (*iustitia commutativa*). This species of justice demands a perfect adjustment of rights and prescribes that they be duly observed and respected.[6]

Commutative justice is the most perfect species of justice, and its violation not only involves moral guilt, but in addition entails the duty of restitution.

A subspecies of distributive justice is *vindictive justice,* which metes out condign punishment to those who commit crimes and thereby injure the common weal.[7] Vindictive justice (*iustitia vindicativa*) may be reduced to legal justice, in so far as the superior who punishes or the subject who is punished promotes the common weal, or to commutative justice, in so far as every judge is supposed to punish by virtue of his office and in accordance with the law.

4 Cfr. Rom. XIII, 1–2, 5–7; 1 Pet. II, 13–16.

5 Jer. XXI, 12; XXII, 3; Prov. VIII, 15 sq.; Wisd. VI, 1–8.

6 Cfr., for instance, Ex. XX, 15, 17; Tob. IV, 15 sq.; Slater, *A Manual of Moral Theology,* I, 341 sq.; M. Cronin, *The Science of Ethics,* Vol. II, pp. 81 sqq.

7 Rom. XIII, 4; 1 Pet. II, 14.

It is objected that this conception of justice unduly stresses the demand of *suum cuique* and thus, by favoring selfishness, runs counter to the social ethos. This is a mistake. Egotism is absolutely excluded by the principle of giving to every one that which is his due or right. Commutative justice, in a sense, interferes with the freedom of the individual; however, legal and distributive justice counteract this effect by reuniting the separated members. One-sided insistence on commutative justice leads to extreme individualism, whilst undue emphasis on legal and distributive justice is apt to entail extreme Socialism. Here, as everywhere, it is necessary to stick closely to the golden mean.[8]

3. Justice in all its forms is a duty inculcated both by the moral law of nature and by Divine Revelation.[9] It is not only one of the so-called fundamental virtues, but a general virtue. "As the will of God directed to the creature, regarded in its total content, constitutes right, *i. e.*, that which directs and governs human actions, so the totality of the free actions corresponding to the divine will is justice, as *virtus generalis.*" [10]

"Justice," says St. Bonaventure, "is said to surround all the powers of man, for it is not only a cardinal virtue, but likewise a general virtue, comprehending the entire rectitude of the soul, because it is defined as the right governance of

8 F. A. Göpfert, *Moraltheologie*, Vol. II, 7th ed., pp. 75 sq.

9 Cfr. S. Lueg and B. Mairhofer, *Bibl. Realkonkordanz*, Vol. I, 5th ed., Ratisbon 1900, pp. 534 sqq.

10 J. E. Pruner, *Lehre vom Recht, und von der Gerechtigkeit*, I, 5.

the will. Hence it comprehends not only those virtues which control man's relations to his fellowmen, as, for example, equity and liberality, but also those that govern his relations to himself, for example, penance and innocence, as well as his relations towards God, *e. g.*, worship, piety, and obedience." [11]

That which is due to a man according to the dictates of justice is called his *right*. Every man has a right to live, to enjoy a good name, to hold property, etc. Whoever deprives him of any of these rights is guilty of an *injustice* (*iniuria*), which is a mortal sin *ex genere suo*, because it destroys charity, though it admits of smallness of matter (*parvitas materiae*).[12]

Rights, then, are the subject-matter of justice.

A right may be defined as the *moral power of having, doing, or exacting something*.[13] Justice and right, therefore, are by no means synonymous terms. A right is a claim inhering in the human personality; whereas justice

11 *Breviloquium*, P. V. c. 4: "*Prudentia rectificat* [*vim*] *rationabilem, fortitudo irascibilem, temperantia concupiscibilem, iustitia vero rectificat omnes has vires in comparatione ad alterum. Et quia illud alterum determinate potest esse proximus, potest etiam idem homo comparari ad seipsum, ut ad alterum, potest etiam esse ipse Deus. Hinc est, quod institia circumire dicitur omnes vires, est enim non tantum virtus cardinalis, verum etiam generalis, comprehendens totius animae rectitudinem, quum ipsa dicatur rectitudo voluntatis. Unde ipsa non tantum comprehendit virtutes ordinantes ad proximum, sicut est aequitas et liberalitas, verum etiam ad seipsum, sicut est poenitentia et innocentia, nec non ad Deum, sicut est latria, pietas et oboedientia.*"—Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 58, art. 5.

12 Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 59, art. 1–4; J. Schwane, *Die Gerechtigkeit*, pp. 45 sqq.

13 Slater, *Mor. Theol.*, I, 343.

regulates the proper distribution of rights. A right is something definite and concrete, whereas justice is that which defines, determines, or guides. Rights, strictly speaking, appertain to jurisprudence, whereas justice belongs to ethics. The virtue of justice may be derived and developed from the principles of moral science. Christian revelation, containing within itself the highest and most perfect system of morality, also furnishes the most complete notion of justice. But the knowledge of what is "right" must be gathered from the science of jurisprudence, and in discussing the "rights" of men, theology is as dependent upon jurisprudence as jurisprudence in its turn is dependent upon the fundamental truths of Christianity for the correct notion of justice. We have a divine revelation concerning justice, but none concerning rights.[14] It is easy to be a jurist, but it is difficult to practice justice.

READINGS.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 58–61 (Jos. Rickaby, S. J., *Aquinas Ethicus, or the Moral Teaching of St. Thomas*, Vol. II, [London 1896, pp. 11 sqq.]).—J. Schwane, *Die Gerechtigkeit*, Freiburg 1873.—A. Van Gestel, *De Iustitia et Lege Civili*, 2nd ed., Gröningen 1896, pp. 9 sqq., 46 sqq.—V. Cathrein S. J., *Moralphilosophie*, Vol. I, 5th ed., pp. 355 sqq.—Thos. Slater, S. J., *A Manual of Moral Theology*, Vol. I, pp. 340 sqq.—V. Cathrein, S.J., *Recht, Naturrecht und positives Recht*, Freiburg 1901.—A. Vermeersch, S. J., *Quaestiones de Iustitia*, Bruges 1901, pp. 6 sqq.—J. E. Pruner, *Lehre vom Recht und von der Gerechtigkeit*, Vol. I, Ratisbon 1857, pp. 5 sqq.—J. Kiefer, *Die Tugend der ausgleichenden Gerechtigkeit*, 2nd ed., Eichstätt 1908.—J. A. Ryan, *Distributive Justice*, New York 1916.—J. E. Ross, C.S.P., *Christian Ethics*, pp. 241 sqq., New York 1919.—M. Cronin, *The Science of Ethics*, Vol. II, Dublin 1917, pp. 80 sqq.—H. Woods, S. J., *A First Book in Ethics*, N. Y. 1923, pp. 71 sqq.

[14] Cfr. Linsenmann, *Moraltheol.*, p. 408.

SECTION 3

CHARITY

1. DEFINITION.—Charity, as here understood, is a virtue by which we love God above all things for His own sake and our neighbor because of God. In this part of our treatise we deal with charity only in relation to our neighbor.

We love our neighbor if we wish him well (*bene velle*) both in regard to his temporal and eternal destiny, and if we aid him to the best of our ability in attaining that destiny (*bene facere*).

Charity, therefore, includes both the benevolent disposition which the Scholastics term *amor affectivus* and that constant inclination to do good which is known as *amor effectivus.*[1]

In the form of *philanthropy* or *humanity,* charity as a moral virtue was known and to some extent practiced by the ancient pagans.[2]

2. CHARITY AS A DUTY.—Whilst the Mosaic law[3] limited the exercise of charity to the mem-

1 Tob. IV, 16; Matth. VII, 12; 1 Thess. IV, 9; 1 John II, 10; III, 18, IV, 12.

2 Cfr. F. Bittner, *Lehrbuch der kath. Moraltheologie,* pp. 420 sqq.

3 Lev. XIX, 18, 34; Matth. V, 43; Luke X, 36 sq.

bers of the Jewish nation, Christianity proclaims it as a universal duty, the fulfilment of which forms a distinctive badge of the true Catholic.[4] For the precept inculcating love of neighbor virtually contains all the other commandments, even the "first and greatest," which is to love God above all things, and if we disobey this law, the observance of the others is unavailing for salvation, because sanctifying grace cannot dwell in the soul without charity.[5]

It follows that both as *amor affectivus* and as *amor effectivus* charity is a sacred duty. "What shall it profit, my brethren, if a man say he hath faith, but hath not works? Shall faith be able to save him? And if a brother or sister be naked, and want daily food, and one of you say to them: Go in peace, be ye warmed and filled, yet give them not those things that are necessary for the body, what shall it profit?" [6] "My little children, let us not love in word, nor in tongue, but in deed and in truth." [7]

4 Matth. XXII, 39; John XIII, 34 sq.; XV, 12, 17; 1 John II, 10.

5 Matth. XXII, 40; Rom. XIII, 8–10; 1 Cor. XIII, 1–3; 1 John III, 14 sq.; IV, 7 sq., 20 sq.

6 Jas. II, 14 sq.: *"Quid proderit, fratres mei, si fidem quis dicat se habere, opera autem non habeat? Numquid fides poterit salvare eum? Si autem frater et soror nudi sint, et indigeant victu quotidiano, dicat autem aliquis ex vobis illis: Ite in pace, calefacimini et saturamini: non dederitis autem eis, quae necessaria sunt corpori, quid proderit."*

7 1 Ioa. III, 18: *"Filioli mei, non diligamus verbo, neque linguâ, sed opere et veritate."* Cfr. *Prop. damn. sub Innoc. XI*, n. 10: *"Non tenemur proximum diligere actu interno et formali"*; n. 11: *"Prae-*

Christ called the precept of charity which He gave to His disciples "a new commandment." He explained its meaning more fully, revealed its chief motives, and gave us a perfect model of its exercise in His own appearance and conduct, and, in re-creating man by means of grace enabled him for the first time since the Fall to observe the law of charity in its perfection.[8]

3. The Rule of Charity.—The rule or norm of charity is Christian self-love,[9] its principal motive is the love of God.[10] We must love our neighbor first of all because he is a child of God, redeemed by Jesus Christ, and as such an object of divine love; and, secondly, because such is God's will, revealed to us in Sacred Scripture and by the example of our Divine Saviour.[11] God has created all men in His own image and likeness; all rational creatures form one great family under Him, as their common Father; all are capable, through grace, of attaining eternal happiness with Him in Heaven.[12]

4. The Qualities of Charity.—Christian charity must of its very nature be religious, that

cepto proximum diligendi satisfacere possumus per solos actus externos." (Denz.-Bannwart, *Enchiridion*, n. 1160 sq.)

8 Simar, *Moraltheol.*, 3rd ed., pp. 375 sq.

9 See this *Handbook*, Vol. III, pp. 4 sqq.

10 See this *Handbook*, Vol. IV, pp. 71 sqq.—Cfr. Tob. IV, 16; Matth. VII, 12.—St. Augustine, *De Vera Relig.*, c. 46, n. 87: "*Ea est regula dilectionis, ut quae sibi vult bona provenire, et illi velit, et quae accidere sibi mala non vult, et illi nolit. Hanc voluntatem erga omnes homines servat.*" (Migne, *P. L.*, XXXIV, 161).—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 25, art. 1.

11 Mal. II, 10; Matth. XXII, 39; John XIII, 34; XV, 12, 17; Rom. V, 8 sq.; Eph. IV, 1–6.

12 Slater, *Mor. Theol.*, I, 179.

is to say, it must have its motive and purpose in God;[13] and, in the second place, universal, *i. e.,* it must embrace both the physical and the spiritual needs of our fellowmen and extend to all without exception, even to personal enemies.[14] Finally, charity must be effective, *i. e.,* it must not consist in mere sentimentality or empty words, but manifest itself in deeds and sacrifices.[15]

The characteristic notes of charity are summed up by St. Paul in a famous passage as follows: "Charity is patient, is kind; charity envieth not, is not pretentious, is not puffed up, behaveth not amiss, seeketh not her own, is not provoked, regardeth not evil; rejoiceth not over wickedness, but rejoiceth with the truth; beareth all things, believeth all things, hopeth all things, endureth all things." [16]

a) The purest form of charity is that by which the Christian believer loves his *enemies.* All other kinds of charity may have an admixture of selfishness, but to love one's enemies requires complete self-denial for God's sake. The precept by which we are bound to love our en-

13 Luke XIV, 26; 1 John III, 17 sq.—Cfr. St. Thomas, *Summa Theologica,* 2a 2ae, qu. 44, art. 7.

14 Matth. V, 43–47; VI, 12, 15; XXII, 39; Luke XXIII, 24; Rom. XII, 14–21.—Cfr. St. Thomas, *Summa Theol.,* 2a 2ae, qu. 25, art. 8 sq.; Randlinger, *Die Feindesliebe,* pp. 79 sqq., 101 sqq.

15 John XIII, 34; XV, 12; Rom. V, 6–8; Jas. II, 15 sq.; 1 John III, 16–18.

16 1 Cor. XIII, 4–7: *"Charitas patiens est, benigna est; charitas non aemulatur, non agit perperam, non inflatur, non est ambitiosa, non quaerit quae sua sunt, non irritatur, non cogitat malum, non gaudet super iniquitate, congaudet autem veritati: omnia suffert, omnia credit, omnia sperat, omnia sustinet."*—Cfr. Phil. II, 1–4.

emies is an essential characteristic of the Christian religion, and in obeying it charity attains its loftiest heights.[17]

How must we love our enemies? We must love them both positively and negatively.

b) First and above all we are forbidden to hate them, *i. e.*, we must put out of our hearts all ill will and revenge against those who dislike and wrong us, and show them those common marks of Christian charity which are due to all and may be refused to none.[18] What those marks are depends largely on the usages of time and place and of the society to which the parties belong.[19] This friendly disposition does not, of course, forbid the use of legal means to protect one's rights, if they have been violated, or to forestall future violations.

c) The offender must take the first step towards reconciliation. He must show that he has changed his mind by asking for forgiveness and offering to make due reparation. The offended or injured person, on the other hand, is permitted to await the approaches of the offender, unless there be danger that, if he failed to act, recon-

17 St. Augustine, *Enarrat. in Ps.*, XCIII, n. 28: *"Quod quum facit Deus* (Hebr. XII, 6–7), *ad hæreditatem sempiternam nos erudit, et hoc nobis praestat saepe de malis hominibus, in quibus exercet et perficit dilectionem nostram, quam vult extendi usque ad inimicos. Neque enim est perfecta dilectio christiani, nisi quum implet, quod Christus praecepit* (Mt. v, 44): *Diligite inimicos vestros, benefacite his, qui vos oderunt, et orate pro eis, qui vos persequuntur."* (Migne *P. L.*, XXXVII, 1214).—Idem, *Serm.*, 56 *(al.* 48 *de Divers.)*, c. 10, n. 14: *"Habetis inimicos; quis enim vivat in hac terra non habens inimicum? Intendite vobis, diligite illos. Nullo modo tibi potest nocere saeviens inimicus, quantum tibi noces, si non diligis inimicum. Ille enim nocere potest aut villae tuae aut pecori tuo aut domui tuae aut servo tuo aut ancillae tuae aut filio tuo aut coniugi tuae aut, ut multum, si illi data fuerit potestas, carni tuae. Numquid quomodo tu animae tuae? Extendite vos ad istam perfectionem, carissimi, exhortor vos."* (*P. L.*, XXXVIII, 383).—Cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 199–202; Capitaine, *Die Moral des Klemens von Alex.*, pp. 347 sq.; Seitz, *Die Heilsnotwendigkeit der Kirche*, pp. 183 sqq.

18 Cfr. Slater, *Mor. Theol.*, Vol. I, p. 186.

19 *Ibid.*

ciliation would become impossible, or grave scandal would arise, or important duties would be neglected, or unless he himself has retaliated by committing an additional injury against the offender.

d) Reconciliation can be effected by showing to one's enemy the *ordinary* signs of charity which are due to all men. *Extraordinary* signs of charity (familiar intercourse, visits, etc.) are due only to the members of one's family and to neighbors of equal social standing, but not to strangers or persons of lower social position.[20] There are circumstances, however, in which we are bound to show special signs of charity even to our enemy; for instance, when they cannot be withheld without scandal to others, who will ascribe the refusal to hatred; or when they are required to prevent our enemy from falling into grievous sin, for example, by conceiving a more intense hatred for us.[21] "If thy enemy be hungry, give him to eat; if he thirst, give him water to drink: for thou shalt heap hot coals upon his head, and the Lord will reward thee." [22]

Different virtues manifest themselves in social inter-

20 *Ibid.*

21 *Op. cit.*, p. 187; cfr. St. Bernard, *Epist.*, I, n. 13: *"Libentius te insequitur adversarius fugientem quam sustineat repugnantem; et audacius insistit a tergo quam resistat in faciem."* (Migne, *P. L.*, CLXXXII, 78 sq.).

22 Prov. XXV, 21 sq.: *"Si esurierit inimicus tuus, ciba illum: si sitierit, da ei aquam bibere; prunas enim congregabis super caput eius, et Dominus reddet tibi."*—Cfr. Rom. XII, 20 sq.: *"Sed si esurierit inimicus tuus, ciba illum: si sitit, potum da illi: hoc enim faciens, carbones ignis congeres super caput eius. Noli vinci a malo, sed vince in bono malum."*—Cfr. St. Augustine, *Enarr. in Ps.*, CXLIII, n. 3: *"De nulla re sic vincitur inimicus, quam quum misericordes sumus."* (Migne, *P. L.*, XXXVII, 1860).—Idem, *Serm.*, CXLIX (*al.* XXVI *De Divers.*), n. 19: *"Quum quisque benefecerit inimico et non victus malo eius vicerit in bono malum, plerumque illum inimicitiarum suarum poenitebit et irascetur sibi, quod tam bonum hominem laeserit. Ipsa vero ustio poenitentia est, quae tamquam carbones ignis inimicitias eius malitiasque consumit."* (Migne, *P. L.*,

course, according as it is narrow or broad, but one thing is always necessary, and that is *politeness,* based upon that good will which every man owes every other man. Politeness in itself may embody respect, but as a rule it is little more than a manifestation of external deference. Natural ethics demands that we treat all our fellowmen with benevolence.[23] Christianity requires even more, namely, that we sincerely *love* them, one and all.

Against this precept some have objected that it is impossible to love those whom we do not know and who, perhaps, inspire us with a natural antipathy. This objection is based upon a misunderstanding. All that is demanded of us is that we wish our fellowmen well and be willing to help them in case of need. Mutual benevolence is the necessary basis of social intercourse. He who does not wish his fellowmen well, will associate with them solely for his own selfish purposes and thereby make truly social relations impossible, because he denies to others what he demands for himself.

The matter lies somewhat differently with regard to *trust* and *confidence.* As long as I do not know a man, I must suppose that he entertains a feeling of benevolence for his fellowmen, and therefore I have no right to treat him with suspicion, much less to harbor enmity against him. But I may and should practice *prudent reserve* until I have had an opportunity to know the stranger more intimately. This prudent reserve is all the more neces-

XXXVIII, 807).—Idem, *Epist.,* CLIII (*al.* LIV), c. I, n. 3: *"Facile est atque proclive malos odisse, quia mali sunt, rarum autem et pium, eosdem diligere, quia homines sunt, ut in uno simul et culpam improbes et naturam approbes ac propterea culpam inustius oderis, quod ea foedatur natura, quam diligis."* (*Ibid.,* XXXIII, 654). Cfr. Randlinger, *Die Feindesliebe,* p. 86.

23 M. Cronin, *The Science of Ethics,* Vol. I, pp. 317 sqq.

sary for the reason that I do not know whether the stranger wishes to enter into closer relations with me or not. Men are differently constituted, and a hasty friendship often changes into enmity when the dissimilarity of natures becomes manifest, whereas a prudent reserve need not disturb mutual good will.

One of the principal difficulties connected with social intercourse is to determine the degree of *intimacy* one should cultivate with others. As this is largely a matter of character and taste, it must be left to the choice of each individual.[24]

The commandment to love all men does not exclude, but, on the contrary, includes a certain order in the practice of this virtue, for the due ordering of charity appertains to the concept of *virtue,* in as much as a truly virtuous man will have due regard for the proper relations between charity and its object.[25]

The moral value of *friendship,* when it is founded in God, is clearly indicated by Sacred Scripture. "A faithful friend is a strong defence, and he that hath found him, hath found a treasure. Nothing can be compared to a faithful friend, and no weight of gold and silver is able to countervail the goodness of his fidelity. A faithful friend is the medicine of life and im-

24 Dorner, *Individuelle und soziale Ethik,* pp. 137 sq.; cfr. Göpfert, *Moraltheol.,* Vol. II, 7th ed., pp. 15 sqq.

25 St. Augustine, *De Doctrina Christ.,* l. I, c. 27, n. 28: *"Ille iuste et sancte vivit, qui rerum integer aestimator est: ipse est autem, qui ordinatam dilectionem habet, ne aut diligat, quod non est diligendum, aut non diligat, quod est diligendum, aut amplius diligat, quod minus est diligendum, aut aeque diligat, quod vel minus vel amplius diligendum est, aut minus vel amplius, quod aeque diligendum est."* (Migne, *P. L.,* XXXIV, 29). —Cfr. St. Thomas, *Summa Theol.,* 2a 2ae, qu. 44, art. 8.

mortality: and they that fear the Lord shall find him." [26] St. Augustine says that *amicitia* derives its name from *amor,* and no one can be a faithful and constant friend except in Christ.[27] Cicero declares that true friendship can flourish only among the virtuous.[28]

Clement of Alexandria distinguishes *three kinds of friendship.* The first, he says, is based upon equality of virtue and character and is the most excellent and the strongest. The second results from acts of mutual benevolence, and is useful for everyday life. The third is little more than habitual kindness based upon mutual good will. True friendship, he adds, cannot co-exist with injustice and dishonesty, much less with flat-

26 Ecclus. VI, 14–16; cfr. Prov. XVII, 17; XVIII, 19; Ecclus. XXXVII, 1 sqq.; John XV, 13–15.

27 St. Augustine, *Contra Duas Epist. Pelag.,* l. I, n. 1: *"Quid est aliud amicitia, quae non aliunde, quam ex amore nomen accepit et nusquam nisi in Christo fidelis est, in quo solo esse etiam sempiterna ac felix potest?"* (Migne, *P. L.,* XLIV, 551). Cfr. the same Saint's *Epistolae,* LXXXII (*al.* XIX), c. 3, n. 36 and CLV (*al.* LII), n. 1; CCLVIII (*al.* CLV), n. 1–4 (*P. L.,* XXXIII, 291, 667, 1071).

28 *Laelius sive de Amicitia,* c. 5: *"Hoc primum sentio, nisi in bonis amicitiam esse non posse."—Ibid.,* c. 6: *"Est amicitia nihil aliud, nisi omnium divinarum humanarumque rerum cum benevolentia et caritate summa consensio."—Ibid.,* c. 11: *"Quum conciliatrix amicitiae virtutis opinio fuerit, difficile est amicitiam manere, si a virtute defeceris."—Ibid.,* c. 12: *"Haec lex in amicitia sanciatur, ut neque rogemus res turpes, nec faciamus rogati."—Ibid.,* c. 13: *"Haec prima lex amicitiae sanciatur, ut ab amicis honesta petamus, amicorum causa honesta faciamus."—Ibid.,* c. 18: *"Firmamentum stabilitatis constantiaeque eius, quam in amicitia quaerimus, fides est. Nihil enim stabile est, quod infidum est. . . . Ita fit verum illud, quod initio dixit, amicitiam nisi inter bonos esse non posse."—Ibid.,* c. 22: *"Maximum ornamentum amicitiae tollit, qui ex ea tollit verecundiam. Itaque in iis perniciosus est error, qui existimant, libidinum peccatorumque omnium patere in amicitia licentiam. Virtutum amicitia adiutrix a natura data est, non vitiorum comes."*

tery, which is its worst enemy.[29] Dear to me are my friends, but my enemies, too, have a claim on my good will and assistance. "My friend shows me what I can do," says Schiller, "my enemy, what I ought to do." Lucky is the man who has many friends, but woe to him who places too much reliance upon them. "A true friend proves his friendship when things grow uncertain," says Quintus Ennius.[30] Saint Jerome writes: "A friendship which ceases was never a true friendship."[31] There are many who stick to a friend

29 Capitaine, *Die Moral des Klemens von Alexandrien*, pp. 345 sq.—Seneca, *De Benefic.*, l. VII, c. 25: *"Tam bella res, admonitio inter amicos."*—Cicero, *Laelius sive de Amicitia*, c. 25: *"Ut igitur et monere et moneri proprium est verae amicitiae, et alterum libere facere, non aspere, alterum patienter accipere, non repugnanter, sic habendum est, nullam in amicitiis pestem esse maiorem, quam adulationem, blanditiam, assentationem. Quamvis enim multis nominibus est vitium notandum levium hominum atque fallacium, ad voluptatem loquentium omnia, nihil ad veritatem. Quum autem omnium rerum simulatio est vitiosa, tollit enim iudicium veri idque adulterat, tum amicitiae repugnat maxime, delet enim veritatem, sine qua nomen amicitiae valere non potest. Nam quum amicitiae vis sit in eo, ut unus quasi animus fiat ex pluribus: qui id fieri poterit, si ne in uno quidem quoque unus animus erit idemque semper, sed varius, commutabilis, multiplex? Quid enim potest esse tam flexibile, tam devium [al.: tenerum], quam animus eius, qui ad alterius non modo sensum ac voluntatem, sed etiam vultum atque nutum convertitur. Negat quis? Nego. Ait? Aio. Postremo imperavi egomet mihi, omnia assentari, ut ait idem Terentius, sed ille sub Gnathonis persona: quod amici genus adhibere, omnino levitatis est. Multi autem Gnathoni similes, quum sint loco, fortuna, fama superiores: horum est assentatio molesta, quum ad vanitatem accessit auctoritas."* Cfr. Terentius, *Eunuch.*, 252 sq.

30 Quoted by Cicero, *De Amicitia*, c. 7.

31 *Epist.*, III (*al.* XLI), n. 6: *"Obsecro te, ne amicum, qui diu quaeritur, vix invenitur, difficile servatur, pariter cum oculis mens amittat. Fulgeat cuilibet auro et pompaticis ferculis corusca ex sarcinis metalla radient. Caritas non potest comparari. Dilectio pretium non habet. Amicitia, quae desinere potest, vera nunquam fuit."*—Cfr. St. Ambrose, *De Offic.*, l. II, c. 21, n. 123–137 (*P. L.*, XVI, 179 sq.)—Ovid., *Trist.*, I, 9, 5 sq.:

as long as he shares their foibles and approves of their doings, but deny him as soon as he ventures to have opinions of his own.

5. What should be considered *special or common manifestations of charity* depends much on the established customs of a locality or community. In a general way it may be said that ordinary signs of charity are those that citizen commonly shows to citizen, relative to relative, neighbor to neighbor, friend to friend; special signs of charity are unusual marks of good will, such as are not ordinarily shown to all within a particular class. If acquaintances are accustomed to exchange greetings when they meet, if near relatives are always invited to family festivities, if friends visit one another, such courtesies are ordinary signs of charity in the places where they are customary. But it would be a special mark of charity to pay a social call to a mere acquaintance or to invite a friend to a gathering of one's relatives. [32]

6. Opposed to charity are: *contempt, hatred, envy, jealousy, vengefulness, cruelty, joy at the misfortunes of others, unwillingness to be reconciled,* and every form of *injustice.*

Readings.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 25–27 (Rickaby, *Aquinas Ethicus,* II, 359 sqq.).—F. Dupanloup, *La Charité Chrétienne et ses Œuvres,* Paris 1863 (Germ. tr., *Die christliche Nächstenliebe und ihre Werke,* Ratisbon 1864).—V. Cathrein, *Moralphilosophie,* Vol. II, 5th ed., pp. 77 sqq.—S. Randlinger, *Die Feindesliebe,* pp. 79 sqq., 101 sqq., Paderborn

"Donec eris felix, multos numerabis amicos. Tempora si fuerint nubila, solus eris."

[32] *Homiletic and Pastoral Review,* Vol. XX (1920), No. 10.

1906.—Steinmüller, *Die Feindesliebe,* pp. 6 sqq.—F. A. Göpfert, *Moraltheologie,* Vol. II, 7th ed., pp. 15 sqq.—J. Mausbach, *Die Ethik des hl. Augustinus,* Vol. I, pp. 27 sqq.—E. M. Ommer, *L'Amitié,* Paris 1895.—M. Lazarus, *Das Leben der Seele,* Vol. III, 2nd ed., Berlin 1882, pp. 251 sqq.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 66 sqq.—H. Noldin, S. J., *Summa Theol. Mor.,* Vol. II, pp. 86 sqq.

CHAPTER II

MAN'S DUTIES WITH REGARD TO THE SPIRITUAL WELFARE OF HIS FELLOWMEN

SECTION 1

THE SPIRITUAL WORKS OF MERCY

Apart from the special duties imposed by one's vocation (for instance, as pastor, teacher, parent, etc.), every man has certain general duties with regard to the salvation of his fellowmen. These are dictated partly by charity and partly by justice, and are commonly known as *spiritual works of mercy*.[1] They are briefly:

I. The Duty of Praying for Others, both the Living and the Dead.—Through the Communion of Saints the faithful on earth, especially those who are in the state of sanctifying grace, have a share in all the Masses, prayers, and good works offered to God by the Militant Church and

1 Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 32, art. 2: *"Ponuntur . . . septem eleemosynae spirituales, scilicet docere ignorantem, consulere dubitanti, consolari tristem, corrigere peccantem, remittere offendenti, portare onerosos et graves et pro omnibus orare, quae etiam in hoc versu continentur: Consule, castiga, solare, remitte, fer, ora."* The memorial verse referred to has another form, namely: *"Consule, carpe, doce, solare, remitte, fer, ora."*

in turn can and should on their part aid the living as well as the poor souls in Purgatory by prayers, indulgences, alms, etc.,[2] especially by having the holy Sacrifice of the Mass offered for their benefit.[3]

2. The Duty of Giving a Good Example.—Christ exhorts His hearers: "Let your light shine before men, that they may see your good works, and glorify your Father who is in heaven."[4] St. Paul admonishes the Romans: "Let every one of you please his neighbor unto good, to edification."[5] And the Corinthians: "Giving no offence to any man, that our ministry be not blamed, but in all things let us exhibit ourselves as the ministers of God, in much patience, in tribulation, in necessities, in distresses, in stripes, in prisons, in seditions, in labors, in watchings, in fastings, in chastity, in knowledge, in long-suffering, in sweetness, in the Holy Ghost, in charity unfeigned, in the word of truth, in the power of God."[6] To the Thessalonians he

2 2 Tim. I, 16–18.—St. Augustine, *Serm.*, CLIX (*al.* XVII *De Verb. Apost.*), c. I, n. 1: *"Pro ceteris defunctis oratur: iniuria est enim pro martyre orare, cuius nos debemus orationibus commendari."* (Migne, *P. L.*, XXXVIII, 868).—St. Thomas, *Summa Theol.*, 3a, Suppl., qu. 71, art. 1–6.—Pohle-Preuss, *Mariology*, pp. 142 sqq.; Pohle-Preuss, *The Sacraments*, Vol. II, pp. 376 sqq.

3 Pohle-Preuss, *Eschatology*, pp. 92 sqq.; Noldin, *Summa Theol. Mor.*, Vol. II, p. 159.

4 Matth. V, 16.

5 Rom. XV, 2.

6 2 Cor. VI, 3 sqq.: *"Nemini dantes ullam offensionem, ut non vituperetur ministerium nostrum: sed in omnibus exhibeamus nosmetipsos sicut Dei ministros in multa patientia, in tribulationibus, in necessitatibus, in angustiis, in plagis, in carceribus, in seditionibus, in laboribus, in vigiliis, in ieiuniis,*

writes: "Comfort one another, and edify one another." [7] And to Timothy: "Let no man despise thy youth: but be thou an example of the faithful in word, in conversation, in charity, in faith, in chastity." [8]

This duty must be performed the more faithfully because, as experience teaches, the power of *example* is very strong. *"Verba movent, exempla trahunt,* Words move, but examples draw," says an ancient proverb. Equally well-known perhaps is Seneca's famous saw: *"Longum iter per praecepta, breve et efficax per exempla,* Long is the way through precept, but short and sure through example." Nor does the force of a good example depend entirely upon the station, or the social position, or the learning of him who gives it. On the contrary, every man, no matter how humble or illiterate, can and should promote the salvation of his fellowmen and the glory of God by giving a good example. Virtue must be practiced soberly, yet joyously and without pharisaic ostentation. [9]

in castitate, in scientia, in longanimitate, in suavitate, in Spiritu sancto, in charitate non ficta, in verbo veritatis, in virtute Dei. . . ." Cfr. C. J. Callan, O.P., *The Epistles of St. Paul,* Vol. I, N. Y. 1922, pp. 506 sqq.

7 1 Thess V, 11: *"Consolamini invicem et aedificate alterutrum."*

8 1 Tim. IV, 12: *"Nemo adolescentiam tuam contemnat: sed exemplum esto fidelium in verbo, in conversatione, in charitate, in fide, in castitate."*

9 Seneca, *Epist.,* VI, 5: *"Plus tibi et viva vox et convictus quam oratio proderit. In rem praesentem venias oportet. Primum quia homines amplius oculis quam auribus credunt, deinde quia longum iter est per praecepta, breve et efficax per exempla."*—Cfr. Tit. II, 7; 1

According to the Acts of the Apostles, Christ first "began to do" and then "to teach." [10] He told His disciples: "I have given you an example, that as I have done to you, so you do also." [11] "Christ suffered for us," says St. Peter, "leaving you an example that you should follow his steps." [12] St. Paul exhorts the Corinthians: "Be ye followers of me, as I also am of Christ." [13] Aside from its inherent power, confirmed by innumerable miracles,[14] Christianity owed its rapid spread mainly to the good example given by its followers, particularly to the heroism of the martyrs, who courageously laid down their lives for the faith.[15] "A good example," says the famous Jesuit pulpiteer, Francis Hunolt,[16] "is like a big clock in a church-tower, by which all other clocks and watches of the neighborhood are regulated." Schiller says: "Words will not avail much where deeds do not speak."

3. Other spiritual works of mercy are instruction (*doctrina, consilium*) and fraternal correction (*correctio fraterna*).

a) The *duty of instructing the ignorant* rests principally upon the learned and educated.

b) By *fraternal correction* is meant a brotherly admonition given to a sinner in order to persuade him to mend his ways.[17] Divine Revelation

Pet. II, 9, 12, 15; Matth. 6, 16; Phil. IV, 4.—Seneca, *De Ira*, l. II, c. 6, n. 2: *"Gaudere laetarique proprium et naturale virtutis est, irasci non est ex dignitate eius, non magis quam moerere."*

10 Acts I, 1.

11 John XIII, 15.

12 1 Pet. II, 21.

13 1 Cor. XI, 1.

14 Mark XVI, 20.

15 Tertullian, *Apol.*, c. 50: *"Plures efficimur, quoties metimur a vobis; semen est sanguis Christianorum."* (Ed. Leopold, P. I, p. 128).

16 On Hunolt, see the *Catholic Encyclopedia*, Vol. VII, pp. 562 sqq.

17 St. Thomas, *Comment. in Sent.*, IV, dist. 19, qu. 2, art. 1: *"Correptio fraterna est admonitio fratris*

inculcates this as a duty of charity and describes its performance as a highly meritorious work.[18] Fraternal correction is a grave obligation, as it forms part of the precept of charity which binds all men.[19] Private persons, however, are ordinarily not obliged *sub gravi* to exercise fraternal correction, except when there is immediate danger to the spiritual welfare of others, that is to say, under the following conditions:

(α) The matter involved must be grave (*res gravis*) and it must be certain (*notitia certa*) that a grievous sin has been committed or there is real and proximate danger that it will be committed;

(β) There must be a reasonable expectation (*spes plena*) that the admonition will be heeded;

(γ) He who is about to administer a fraternal correction must be the proper person to do so and have no reason to fear serious inconvenience to himself (*grave incommodum*) or greater injury than that which he is trying to prevent.

With regard to the manner in which the *correctio fraterna* should be administered, certain rules can be deduced from the utterances of Jesus

de emendatione delictorum fraternâ caritate procedens."—Cfr. *Summa Theol.*, 2a 2ae, qu. 33.—Slater, *Mor. Theol.*, Vol. I, p. 194.

18 Lev. XIX, 17; Ecclus. XIX, 14; Matth. XVIII, 15 sqq.; Gal. VI, 1; 1 Thess. V, 14 sq.; 2 Thess. III, 14 sq.; 1 Tim. V, 20; Jas. V, 19 sq.

19 Slater, *Mor. Theol.*, Vol. I. p. 194.

Christ. "If thy brother shall offend against thee," He says, "go and rebuke him between thee and him alone. If he shall hear thee, thou shalt gain thy brother. And if he will not hear thee, take with thee one or two more, that in the mouth of two or three witnesses every word may stand. And if he will not hear them, tell the church. And if he will not hear the church, let him be to thee as the heathen and the publican." [20] It may not always be wise to carry out this injunction literally, but every *correctio fraterna* should be dictated by a pure motive, and inspired by charity; it should be fatherly when administered to subjects, mild when addressed to equals, and respectful when addressed to superiors.

St. Paul earnestly warns the faithful against uncharitable harshness towards the erring when he says in his second Epistle to the Thessalonians: "If any man obey not our word by this epistle, note that man, and do not keep company with him, that he may be ashamed: yet

20 Matth. XVIII, 15–17: *"Si autem peccaverit in te frater tuus, vade et corripe eum inter te et ipsum solum. Si te audierit, lucratus eris fratrem tuum. Si autem te non audierit, adhibe tecum adhuc unum, vel duos, ut in ore duorum, vel trium testium stet omne verbum. Quod si non audierit eos, dic ecclesiae. Si autem ecclesiam non audierit, sit tibi sicut ethnicus et publicanus."*—Cfr. St. Jerome, *In Amos*, l. II, c. 5: *"Grande peccatum est odisse corripientem, maxime si te non odio, sed amore corripiat, si solus ad solum, si assumpto fratre altero, si postea praesente ecclesia, ut non studio detrahendi, sed emendationis tuae videatur crimen ingerere."* (Migne, *P. L.*, XXV, 1044).—St. Augustine, *Serm.* LXXXII (*al.* XVI *De Verbis Domini*), n. 9–10 (P. L., XXXVIII, 510).—*Constit. Apost.*, l. II, c. 38 (ed. Funk, I, 125).—St. Alphonsus, *Theol. Mor.*, l. II, n. 41–42 (ed. Gaudé, I, 334).

do not esteem him as an enemy, but admonish him as a brother." [21] St. Augustine says that fraternal correciton is an act of charity, of which we must not deprive our fellowman when he is in need of it, for if any one were to die in mortal sin through our failure to administer a fraternal warning, his damnation would be imputable to us.[22]

According to St. Alphonsus [23] bishops and pastors are bound to correct their subjects, even at the risk of life, whenever there is hope of betterment, because their office obliges them to succor their subjects in distress. Those who are *ex officio* called to preach must censure mortal sins, even when there is no immediate expectation of amendment; first, because it is their duty to stand up for the divine commandments and to combat evil; secondly, because there is nearly always reason to hope that the word of God, no matter where sown, will bear fruit, some time and in some way. They must do their duty even at the risk of personal inconvenience if there is reason to expect good fruit and no greater evil need be apprehended for the community.

Private persons, as we have seen, are but rarely obliged under pain of mortal sin to administer fraternal correction, because the conditions enumerated above, as a rule, are not verified in their case. Not to correct those whose state of mind is unknown to us, is a dictate of simple prudence.

21 2 Thess. III, 14 sq.: *"Quod si quis non obedit verbo nostro per epistolam, hunc notate, et ne commisceamini cum illo ut confundatur: et nolite quasi inimicum existimare, sed corripite ut fratrem."*

22 St. Augustine, *Serm.*, V (*al.* I *ex Sirmond.*), n. 2: *"Correptio quasi dilectio est. . . . Sicut ille [Deus] diligit et corripit, sic et tu, si habes aliquem in potestate, quamvis serves affectum dilectionis, noli tamen negare flagellum correptionis. Quia si negaveris, non tenebis dilectionem: quia ille moritur in peccatis, qui forte correptus ea relinqueret, et magis tibi imputatur verum odium."* (Migne, *P. L.*, XXXVIII, 54).

23 *Theol. Mor.*, l. II, n. 40, 42.

It is the more probable opinion that private persons are not, as a rule, obliged to admonish others for committing a material sin through ignorance or inadvertence, though if harm were apt to follow in case such a sin went unreproved, admonition should, of course, be given, for charity requires that we should prevent harm whenever we can.[24]

Gury excuses scrupulous persons from the duty of administering the *correctio fraterna* because they usually lack firmness of judgment, being swayed to and fro by uncertainty or fear.[25]

Göpfert says that the duty of administering the *correctio fraterna* rests in a special manner upon priests in relation to their fellow priests, and adds: "Many a grave scandal could be prevented, many an erring brother could be saved, and much good could be accomplished, were the *correcio fraterna* promptly applied by clergymen to one another." [26]

Closely connected with the duty of administering fraternal correction is the obligation of *denouncing a delinquent* to his superior without first attempting to correct him secretly.[27] This duty binds in the following cases:

(α) If the sin is public:

(β) If a paternal admonition by the superior will in all likelihood prove more effective than fraternal correction by an equal;

(γ) If harm threatens a community from the conduct of the delinquent and can be effectually

24 Slater, *Mor. Theol.*, Vol. I, p. 197.

25 Cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 213.

26 *Moraltheologie*, Vol. II, p. 45.

27 Matth. VII, 1–5.—St. Augustine, *Epist.*, CCXI (*al.* CIX), n. 11 (Migne, *P. L.*, XXXIII, 962).

warded off only by the intervention of the superior;

(δ) If the delinquent belongs to a religious community whose members have voluntarily renounced their rights in this matter and agreed that any one who becomes aware of a fault in another may straightway inform the superior. However, even in this case, there must be a good reason for disclosing the fault to the superior; such as, for example, the correction of the delinquent, the good name of the community, or the preservation of discipline.[28]

St. Paul, when informed by members of Chloe's family that contentions had arisen among the Christians of Corinth,[29] significantly revealed the source of the "denunciation." The so-called Apostolic Constitutions prescribe that the judge (*i. e.*, the bishop) shall not give credence to those who denounce others, but shall institute a careful examination, because "some falsely accuse their fellowmen out of zelotry or envy." [30]

An effective means of denouncing public evils and helping to correct them is the *periodical press,* which should therefore be granted a rea-

28 Slater, *Mor. Theol.*, Vol. I, p. 196.

29 1 Cor. I, 11.

30 *Const. Apost.*, l. II, c. 37 (ed. Funk, I, 123).—Of anonymous denunciation Pliny says (*Epist.*, l. X, 63): *"Invitos ad accipiendum compelliere, quod fortassis ipsis otiosum futurum sit, non est ex iustitia nostrorum temporum."*—Again (*ibid.*, 98): *"Sine auctore propositi libelli [in] nullo crimine locum habere debent. Nam et pessimi exempli nec nostri saeculi est."*

sonable measure of liberty. But a journal, to live up to its mission, should be edited by responsible persons, who are willing and able to use their influence at all times for the good of the community. A conscientious *editor* will not lend his co-operation to the spread of denunciations or scandals and will not publish complaints until he has ascertained that they are justified and that there is good reason to expect that the evil can be cured by publicity. It is wrong to print serious complaints without having made an investigation and still more so to accompany them by offensive or insulting remarks.[31] It is worse to publish unfounded rumors for political ends or to satisfy a sensation-loving public, or worst of all, to corrupt the masses and incite them to revolt.

4. It is a duty to exercise toleration towards those whose religious opinions differ from our own. In practicing toleration we must, however, avoid two extremes, namely, on the one hand, undue importunity in propagating our own ideas and beliefs (commonly called *religious proselytism*) and, on the other, that false tolerance which is synonymous with *indifference to error*. To pity the erring and treat them charitably is as much of a Christian duty as to hate and combat

31 F. X. Linsenmann, *Schriftstellertum und literarische Kritik im Lichte der sittlichen Verantwortlichkeit*, Tübingen 1884.

error.[32] "Love the erring," says St. Augustine in a famous passage, "but kill errors; . . . pray for those whom you refute and convince." [33]

The great Bishop of Hippo did not betray this principle when he called upon the secular power to proceed against the Donatists on the strength of Luke XIV, 23: "Compel them to come in"; for these heretics, by their violent methods of propaganda, had become a menace to the State as well as to the Church. Personally, St. Augustine was very tolerant, as appears from a passage in one of his letters against the Manichaeans. "Let those rage against you," he says, "who do not know what an effort it requires to find the truth and how difficult it is to eschew error." [34]

32 Zach. VIII, 19; Matth. XIII, 28 sqq.; XXIII, 15; Gal. I, 6–9; VI, 1 sq.; Eph. IV, 15.

33 *Enarr. in Ps.*, II, 31, n. 20: *"Tolerantia quae dicitur . . . non est nisi in malis."* (Migne, *P. L.*, XXXVI, 271).—Idem, *Contra Lit. Petil.*, l. I, c. 29, n. 31: *"Diligite homines, interficite errores; sine superbia ac veritate praesumite, sine saevitia pro veritate certate, orate pro eis, quos redarguitis atque convincitis."* (*P. L.*, XLIII, 259). —Cfr. C. Romeis, *Das Heil des Christen ausserhalb der Kirche nach der Lehre des hl. Augustin*, Paderborn 1908, pp. 116 sqq.

34 *Contra Epist. Manich.* (*Fundam.*), c. 2, n. 2: *"Illi in vos saeviant, qui nesciunt, cum quo labore verum inveniatur et quam difficile caveantur errores. Illi in vos saeviant, qui nesciunt, quam rarum et arduum sit, carnalia phantasmata piae mentis serenitate superare. Illi in vos saeviant, qui nesciunt, cum quanta difficultate sanetur oculus interioris hominis, ut possit intueri solem suum. . . . Illi in vos saeviant, qui nesciunt, quibus suspiriis et gemitibus fiat, ut ex quantulacunque parte possit intellegi Deus. Postremo illi in vos saeviant, qui nunquam tali errore decepti sunt, quali vos deceptos vident."* (Migne, *P. L.*, XLII, 174).—Cfr. *Serm.*, IV (*al.* XLIV *De Divers.*), n. 20: *"Porta peccatorem, non ut ames peccatum in illo, sed ut persequaris peccatum propter illum. Dilige peccatorem, non inquantum peccator est, sed inquantum homo est. Quomodo si diligis aegrum, persequeris febrem, nam si parcis febri, non diligis aegrum. Dic ergo, quod verum est fratri tuo, noli tacere. Quid enim aliud agimus, quam dicere vobis, quod verum est? Noli mendaciter; apertâ veritate dic, quod verum: sed donec corrigatur, portetur."* (*P. L.*, XXXVIII, 43).

The true notion of tolerance was clearly perceived by the poet Goethe, when he said: "Tolerance really ought to be no more than a transient state of the mind; it should lead to recognition. To tolerate means to insult."

Protestants like to extol Luther as the father of the modern idea of religious toleration, which in reality, as Msgr. N. Paulus has shown, is a product of the Renaissance. Luther and his fellow-"reformers" were extremely intolerant.

READINGS.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 32 sq. (Rickaby, *Aquinas Ethicus*, II, 383 sqq.).—*Comment. in Sent.*, IV, dist. 19, qu. 2.—F. Suarez, *De Caritate*, disp. 8 (*Opera Omnia*, XIII, 691 sqq.).—J. E. Ross, C. S. P., *Christian Ethics*, pp. 206 sqq.—M. Cronin, *The Science of Ethics*, pp. 66 sqq.—H. Noldin, S. J., *Summa Theol. Mor.*, Vol. II, pp. 85 sqq.

On TOLERATION: J. B. Duvoisin, *Essai sur la Tolérance*, in Migne, *Theol. Curs. Compl.*, VI, 1269 sqq.—J. Perrone, *De Tolerantia, ibid.*, 1255 sqq.—M. Merkle, *Die Toleranz nach kath. Prinzipien*, Dillingen 1865.—J. Seitz, *Die Heilsnotwendigkeit der Kirche*, pp. 182 sqq.—W. Köhler, *Reformation und Ketzerprozess*, Tübingen 1901.—N. Paulus, *Die Strassburger Reformatoren und die Gewissensfreiheit*, Freiburg i. B. 1895.—IDEM, *Luther und die Gewissensfreiheit*, Munich 1905.—G. Diessel, *Die wahre Toleranz*, Münster i. W., 1905.—A. Matagrin, *Histoire de la Tolérance Religieuse*, Paris 1905.—A. Vermeersch, S. J., *Tolerance*, (tr. by W. H. Page), N. Y. 1912.

SECTION 2

SINS AGAINST THE SPIRITUAL WELFARE OF OTHERS

Against the duties described in the foregoing Section we may sin either directly or indirectly.

1. We sin directly against the spiritual welfare of our fellowman:

a) By commanding or compelling him to do wrong;

b) By seducing him to sin, either through inciting his passions by praise or flattery, censure or fear, or by abusing such influence as we may wield over him on account of higher social position or personal superiority;

c) By co-operating in sinful acts through accidental or planned meetings (conspiracy), and

d) By becoming accessory to another's sin through silence or concealment, furnishing opportunities for evil, enticing women or girls to places of prostitution or sending them to foreign lands for immoral purposes (*white slave traffic*), or through the positive furnishing of means for the perpetration of acts of injustice.[1]

1 See this *Handbook*, Vol. II, pp. 62 sqq.; A. Sleumer, *Die Mitwirkung zur Sünde*, Bonn 1907.

There is no such thing as compelling a man to sin, because the human will is free and cannot be coerced by physical force. But the organs of the body may be influenced in such a way as to make compliance almost irresistible, as in the case of rape. Grave authors say that a woman is usually able to resist physical violence when an attack is made upon her chastity; but physical violence is generally accompanied by the dread of being killed, maimed, or exposed to public disgrace, etc. Imagine the case of a good wife and mother who debates with herself whether she shall resist an attack upon her honor by risking death, and you have a concrete case of conflicting duties. To the same class belong cases in which parents force their children to steal or cheat. Here there is a collision between the respect due to parental authority on the one side, and justice and honesty on the other.

A person may become the prey of temptation without being conscious of any outside influence swaying his interior affections. A powerful means of seduction, which scarcely ever fails to attain its end, is *flattery*. The strongest of all in our day is the *public press,* when it combats the truth and caters to the base passions of the multitude.[2]

When there is question of *co-operating in the*

2 Linsenmann, *Moraltheologie,* pp. 428 sq.; H. Belloc, *The Free Press,* London 1918.

sins of others, we must distinguish (α) between formal and material and (β) between immediate and mediate co-operation.

α) Formal co-operation (*cooperatio formalis*) is that in which the sin itself is willed. It is always illicit, because it involves sharing the sinful intention of the other (*cooperatio in malam voluntatem*).

Material co-operation (*cooperatio materialis*) takes place when a man participates in a wicked deed without sharing the evil intention (*cooperatio ad malam actionem*) of the principal. Such co-operation is permitted if the act co-operated in is in itself good, or at least objectively indifferent, or when it is dictated by a just cause, *e. g.*, necessity, great utility, avoidance of a serious inconvenience, etc.

β) Immediate co-operation (*cooperatio immediata*) is a participation in the evil deed itself, not merely in some act preparatory to its commission, which latter would be merely *cooperatio mediata.*

Immediate co-operation in sin is illicit because it involves conscious assent to the sin itself and therefore is equivalent to formal co-operation. Mediate co-operation may be perfectly licit. Thus a servant is allowed to perform acts for which he is hired, even though he knows that he is furnishing his master a remote occasion of sin or assists materially in carrying out a sinful plan.

But he is never permitted to furnish a proximate occasion of sin, not even for the purpose of avoiding great harm to himself.[3] To render a licit service to another may amount to formal cooperation in sin, as, *e. g.*, loaning or selling a gun to a notorious poacher or "boot-legger." If there is no reason for suspecting the intention of the purchaser, it is permissible to sell him dangerous weapons, poison, etc., unless there is a statutory law to the contrary.

A priest may give holy Communion to a secret sinner if the latter demands it publicly.

It is forbidden to make images which one knows to be intended for idolatrous worship, except for a very grave cause.[4]

A Catholic is never allowed to play the organ, to sing or to direct the choir at religious services in a heretical church,[5] or to call in a non-Catholic minister to give the "Lord's Supper" to a sick man.[6] But to advise the

3 *Prop. Damn. sub Innoc. XI,* n. 51: *"Famulus qui submissis humeris scienter adiuvat herum suum ascendere ad fenestras ad stuprandam virginem, et multoties eidem subservit deferendo scalam, aperiendo ianuam aut quid simile cooperando, non peccat mortaliter, si id faciat metu notabilis detrimenti, puta ne a domino male tractetur, ne torvis oculis aspiciatur, ne domo expellatur."* (Denzinger-Bannwart, n. 1201).

4 *S. C. Offic. d. d. Ian.* 14, 1818: *"Non sunt inquietandi, qui haereticorum templa vel Iudaeorum synagogas aedificant, dummodo non adsit scandalum nec fiat in contemptum religionis."*

5 *S. C. Officii. d. d.* 19 *Iunii 1889.* —Cfr. the *Theol.-praktische Quartalschrift,* of Linz, Austria, 1900, pp. 842 sqq.

6 *S. C. Officii, d. d. 15 Mart. 1848: "An liceat monialibus curam infirmorum gerentibus in hospitio advocare ministrum haereticum, qui religionis causa peteretur ab infirmo haeretico? Resp.: Iuxta exposita non licet, passive se habeant."*

minister that some one desires his services or to prepare the table for him is an indifferent act.[7]

In deciding whether and to what extent Catholic officials are permitted to co-operate in the enforcement of unjust laws, for instance, a law compelling Catholic children to attend irreligious schools or assisting in a divorce case, we must first of all consider the question whether the act under consideration is one of tolerance or of positive command, and, secondly, whether or not the object directly aimed at is intrinsically evil. If it is evil, official or authoritative co-operation can not be permitted.[8]

There is one kind of *cooperatio in malum* which deserves special attention in our days, and that is what Fr. Noldin calls the *cooperatio ad pravas ephemerides*—co-operating with an evil press. This sin is incurred not only by the publishers, editors, and printers of wicked and scandalous newspapers and magazines, but also by their readers. Those who occasionally buy and read such a publication co-operate with the publishers only in a remote manner and may therefore be excused if the offense is not too frequently repeated and there is no danger of scandal. Those, on the other hand, who subscribe to such publications, are guilty of proximate co-operation, and their conduct can be excused only by some grave cause, such as business necessity. If any one has to subscribe to a bad newspaper or magazine for some reasonable cause, let him take due precautions: (a) against the danger of perversion, and therefore read only what he needs to know; (b) against giving scandal to the members of his household or to outsiders. This he can do by letting it be known that he has just reason for keeping the publication in question, but that he disap-

7 *C. S. Officii, d. d. 31 Ian. 1872; 14. Dec. 1898.*

8 Lehmkuhl in the *Theol.-prakt. Quartalschrift*, 1898, pp. 89 sqq.; P. Schnitzer, *Kath. Eherecht*, 5th ed., pp. 78 sqq.

proves its general tendency, and by keeping it away from those entrusted to his care.

The *publishers* and *editors* of such sheets are, of course, guilty of formal co-operation in evil. *Regular contributors,* who do not approve of the publication's tendency, and write only indifferent and harmless articles, can hardly be excused from more or less proximate co-operation, while *occasional contributors* co-operate only in a remote way, and may therefore be excused more easily.

Catholics must also refrain from supporting anti-Christian and immoral publications by *advertising* in them.

Those who *sell* or *distribute* such publications co-operate proximately in the evil done by them, though less proximately than those who print them; those engaged in such work should try to obtain other employment if they can.[9]

2. We sin indirectly against the spiritual welfare of our fellowmen by giving *scandal.*

Scandal (*scandalum*) is defined by St. Thomas, following St. Jerome, as *"something less rightly done or said that occasions another's spiritual downfall."* [10]

If the "thing less rightly said or done" is immoral, either in itself or at least according to outward appearance, the scandal is called active or objective (*scandalum activum*). If the act or utterance in question is apt to give scandal merely in an accidental way, and the offense to

9 Noldin, *Summa Theol. Mor.,* Vol. II, pp. 141 sq.

10 St. Jerome, *In Matth.,* l. II, c. 15 (Migne, *P. L.,* XXVI, 107); St. Thomas, *Summa Theol.,* 2a 2ae, 43, art. 1.

others, therefore, arises from their own intellectual or moral condition, the scandal is called passive or subjective (*scandalum passivum*). Subjective or passive scandal, consequently, is identical with the sin caused by the act by which scandal is given (*ruina spiritualis*).[11]

It follows from what we have said that not every active scandal entails passive scandal, while, conversely, passive scandal may exist where no active scandal has been given. The reason for this is the spiritual and moral disposition of men.

If one takes scandal because of his own ignorance or indecision, this is called *scandalum pusillorum vel infirmorum;* if malice is the cause of the scandal taken, we speak of *scandalum pharisaicum.*[12]

11 See Gury, *Comp. Theol. Mor.*, Vol. I, n. 214: *"Distinguitur scandalum directum vel indirectum, prout peccatum proximi intenditur ab agente vel tantum praevidetur saltem in confuso. Scandalum directum dicitur etiam diabolicum, quando intenditur proprie ruina spiritualis proximi. Si vero intenditur peccatum alterius ob proprium commodum, dicitur simpliciter directum. Theologi communiter distinguunt scandalum activum et passivum. Scandalum activum illud est, cui convenit data definitio. Passivum est ipsa ruina spiritualis proximi atque ideo improprie vocatur scandalum, et melius dici debet effectus scandali."*

12 Matth. XV, 11–20; XVIII, 6 sq.; John VI, 62; Gal. V, 11; 1 John II, 10.—Cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 214: *"Scandalum autem potest esse activum seu datum, quin sit passivum seu acceptum, quia ponit potest actio apta de se ad scandalum, quin subsequatur effectus. Et vice versâ potest esse acceptum, quin sit datum; sed tunc scandalum acceptum non proprie tribuendum est actioni alicui proximi, sed potius ignorantiae imaginationi aut etiam malitiae illius, qui scandalum patitur vel potius sine fundamento admittit. Hoc autem dicitur scandalum pusillorum, si ex infirmitate vel ignorantia proximi suscipiatur; vocatur vero pharisaicum, si ex mera subiecti malitia proveniat."*

READINGS.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 43 (Rickaby, *Aquinas Ethicus*, II, 413 sqq.).—St. Alphonsus, *Theol. Mor.*, l. II, n. 43–80 (ed. Gaudé, I, 336).—J. P. Gury, *Compend. Theol. Mor.*, Vol. I, n. 214–247.—F. A. Göpfert, *Moraltheologie*, Vol. II, 7th ed., pp. 62 sqq.—Aug. Lehmkuhl, S. J., *Casus Conscientiae*, Vol. I, 3rd ed., n. 419-445—A. Sleumer, *Die Mitwirkung zur Sünde*, Bonn 1907.—H. Noldin, S. J., *Summa Theol. Mor.*, Vol. II, pp. 131 sqq., 102 sqq., 116 sqq.—Villada, *Casus Consc.*, Vol. I, 2nd ed., pp. 95 sqq.—Chas. S. Devas, *The Key to the World's Progress*, London 1906, pp. 161 sqq.—J. E. Ross, C.S.P., *Christian Ethics*, pp. 226 sqq., 232 sqq.

SECTION 3

DUTIES WITH REGARD TO THE GIVING AND TAKING OF SCANDAL

The duties that arise in connection with the giving and taking of scandal may be briefly defined as follows:

1. It is a sin to *give scandal* (*scandalum activum*) knowingly and wilfully, because by so doing a man violates charity; it is a mortal sin if one knows that by committing the act in question he will become the occasion of mortal sin to another.

The guilt incurred by giving active scandal is measured by the position, reputation, and influence of the person who gives it. The larger the number of those who are injured, and the more grievous the sin they are induced to commit, the greater is the guilt of him who gives scandal. Nor is it necessary that the sin of one's fellowman be directly intended or directly caused by the scandalous act (*seduction*), but it suffices that his spiritual ruin was foreseen and so at least indirectly willed.

The gravity of this sin can be inferred from our Lord's solemn utterance recorded in the Gos-

pel of St. Matthew: "He that shall scandalize one of these little ones that believe in me, it were better for him that a millstone should be hanged about his neck, and that he should be drowned in the depth of the sea. Woe to the world because of scandals! For it must needs be that scandals come: but nevertheless woe to that man by whom the scandal cometh. And if thy hand or thy foot scandalize thee, cut it off, and cast it from thee. It is better for thee to go into life maimed or lame, than having two hands or feet, to be cast into everlasting fire. And if thy eye scandalize thee, pluck it out, and cast it from thee. It is better for thee having one eye to enter life, than having two eyes to be cast into hell fire. See that you despise not one of these little ones: for I say to you, that their angels in heaven always see the face of my Father who is in heaven." [1]

2. In regard to *taking scandal* (*scandalum passivum*) it is necessary to make a distinction.

1 Matth. XVIII, 6 sqq.: *"Qui autem scandalizaverit unum de pusillis istis, qui in me credunt, expedit ei, ut suspendatur mola asinaria in collo eius et demergatur in profundum maris. Vae mundo a scandalis. Necesse est enim, ut veniant scandala: verumtamen vae homini illi, per quem scandalum venit. Si autem manus tua, vel pes tuus scandalizat te: abscide eum, et proïice abs te, bonum tibi est ad vitam ingredi debilem, vel claudum, quam duas manus, vel duos pedes habentem mitti in ignem aeternum. Et si oculus tuus scandalizat te, erue eum, et proïice abs te: bonum tibi est cum uno oculo in vitam intrare, quam duos oculos habentem mitti in gehennam ignis. Videte, ne contemnatis unum ex his pusillis: dico enim vobis, quia angeli eorum in caelis semper vident faciem Patris mei, qui in caelis est."*

No attention need be paid to the *scandalum pharisæicum,* that is, one need not omit any act dictated by duty or necessity on account of the offence it may give to persons of a hypocritical turn of mind. This rule can be inferred from the conduct of Christ Himself and that of St. Paul. When Our Lord declared: "Not that which goeth into the mouth defileth a man, but what cometh out of the mouth, this defileth a man," [2] and His disciples told Him that the Pharisees were scandalized by what He had said,[3] He replied: "Let them alone, they are blind, and leaders of the blind." [4] St. Paul informed the Galatians that he would not yield to the false brethren who pretended to be shocked because the converts from paganism were not circumcised.[5]

As for the *scandalum pusillorum,* even the semblance of injustice should be avoided unless the act to which it attaches is dictated by strict duty.[6] Whatever is necessary and a matter of duty may and should be done, but Christian prudence and charity will avoid giving needless offence to the weak and ignorant.

Regard for the *pusilli* should not, however, be

2 Matth. XV, 11: *"Non quod intrat in os, coinquinat hominem, sed quod procedit ex ore, hoc inquinat hominem."*

3 Matth. XV, 12.

4 Matth. XV, 14: *"Sinite illos: caeci sunt, et duces caecorum."*

5 Gal. II, 3 sq.

6 Rom. XIV, 13 sqq.; 1 Cor. VIII, 9 sqq.; X, 22 sqq.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 43, art. 7 sq.

carried so far as to give scandal to the mature and educated.[7] The maxim, *"In omnibus caritas,"* is correct only when taken in conjunction with, *"Ante omnia veritas."*

3. We are never allowed to seduce our neighbor to commit a lesser in order to keep him from a greater sin, but we may permit a lesser sin in order to prevent a more grievous one,[8] or advise one who is firmly determined to perpetrate a major crime, to commit a minor one. The reason is that, in the words of St. Alphonsus, by so acting we do not seek something that is evil, but something that is good, namely, the preference of a lesser to a greater evil,[9]

7 John VIII, 32, 36.—St. Gregory the Great, *Hom. in Ezech.*, l. I, 7, n. 5: *"Inquantum sine peccato possumus, vitare proximorum scandalum debemus. Si autem de veritate scandalum sumitur, utilius permittitur nasci scandalum, quam veritas relinquatur."* (Migne, *P. L.*, LXXVI, 842).— Cfr. St. Bernard, *Epist.*, 34, n. 2: *"Melius est, ut scandalum oriatur, quam veritas relinquatur."* (*P. L.*, CLXXXII, 140). —Idem, *Epist.*, 78, n. 10 (*P. L.*, CLXXXII, 197); *Apol. ad Guilielm.*, c. 7, n. 15 (CLXXXII, 908).

8 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 78, art. 4: *"Inducere hominem ad peccandum nullo modo licet; uti tamen peccato alterius ad bonum, licitum est, quia et Deus utitur omnibus peccatis ad aliquod bonum."*—*Ibid.*, 3a, Suppl., qu. 62, art. 3, ad 4: *"Quandoque vir uxorem suspectam de adulterio habens ei insidiatur, ut deprehendere possit eam cum testibus in crimine fornicationis, et sic potest ad accusationem procedere."*

9 St. Alphonsus, *Theol. Mor.*, l. II, n. 57: *"Secunda sententia probabilior tenet, licitum esse minus malum suadere, si alter iam determinatus fuerit ad maius exsequendum. Ratio quia tunc suadens non quaerit malum, sed bonum, scilicet electionem minoris mali."* (Ed. Gaudé, I, 353).—St. Augustine, *De Coniug. Adult.*, l. II, c. 15, n. 15: *"Si facturus est, quod non licet, iam faciat adulterium et non faciat homicidium, ut vivente uxore alteram ducat et non humanum sanguinem fundat."* (Migne, *P. L.*, XL, 482).—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 78, art. 4: *"Licet ei, qui incidit in latrones, manifestare bona, quae habet, quae latrones peccant diripiendo, ad hoc, quod non occidatur."*

which is an *actio bona ex obiecto*.[10]

4. Damage or loss caused by active scandal entails the duty of restitution, to be made either in the form of admonition, or instruction, or good example, or prayer, according to the nature of the case. If the damage done was material, material restitution is a duty, provided the damage was, or could have been, foreseen.

St. Paul's admonition: *"Ab omni specie mala abstinete vos"* [11] means, not that we should avoid the semblance of evil, but that we should abstain from evil in every shape.

Women in our licentious days have a special duty to avoid giving scandal by an immodest and seductive attire. The ethics of clothing have been explained in a previous volume of this *Handbook*.[12]

READINGS.—H. Noldin, S. J., *Summa Theol. Mor.*, Vol. II, 13th ed., pp. 118–126.—F. A. Göpfert, *Moraltheologie*, Vol. II, 7th ed., pp. 53–61.—Aug. Lehmkuhl, S. J., *Theol. Mor.*, Vol. I, pp. 433–439.—T. Slater, S. J., *A Manual of Moral Theology*, Vol. I, pp. 198 sqq.

10 The contrary opinion (*non licet suadere minus malum ad evitandum maius*) is defended, *e. g.*, by V. Patuzzi, *Ethica Christiana*, III, 156 sq.—Cfr. this *Handbook*, Vol. I, p. 213, note 3.

11 1 Thess. V, 22: ἀπὸ παντὸς εἴδους πονηροῦ ἀπέχεσθε.

12 Vol. III, pp. 27 sqq. On giving scandal by immodest dress see Noldin, *Summa Theol. Mor.*, Vol. II, pp. 123 sqq.

SECTION 4

THE DUTY AND VIRTUE OF VERACITY

1. DEFINITION.—Veracity or truthfulness (*veritas sive veracitas*) means habitual regard for the truth, and may be defined for our present purpose as the duty of adhering to the truth in our intercourse with others.

St. James teaches: "If any man offend not in word, the same is a perfect man; he is able also with a bridle to lead about the whole body." [1]

Commenting on this passage, Dr. Belser says: "What does it mean not to offend in word, and to be perfect in speech? It means to tell the truth always, to speak exactly as one thinks, to say neither too much nor too little, to speak in the right place and at the proper time, without anger, bitterness, or exaggeration. It is not enough to be cautious in speech for prudence sake or to observe a diplomatic reticence, but we should habitually control our tongue and employ it exclusively for the honor of God and the edification and salvation of our fellowmen." [2]

1 Jas. III, 2: *"Si quis in verbo non offendit, hic perfectus est vir. Potest enim freno circumducere totum corpus."*

2 J. E. Belser, *Die Epistel des hl. Jakobus,* Freiburg i. B. 1909, pp. 140 sq.

2. VERACITY A SOCIAL NECESSITY.—Man is an ethical and a social being. He is made for intercourse with his fellowmen and cannot live without their assistance. Now, community life depends upon mutual fidelity and veracity.[3] "Men could not associate with one another," says St. Thomas, "if they did not believe each other." [4] This is but another way of saying that the virtue of veracity is one of the fundamental conditions of a well-ordered community life and, therefore, a duty resting upon each individual member of society. "Putting away lying," says St. Paul, "speak ye the truth every man with his neighbor; for we are all members one of another." [5]

3. VERACITY A DUTY.—Faith and mutual confidence, without which human society could not exist, are essentially conditioned upon vera-

3 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 109, art. 2: *"Veritas est quaedam specialis virtus, per quam homo exteriora sua vel verba vel facta vel signa debito ordine disponit."—Ibid.*, qu. 129, art. 3, ad 1: *"Indiget omnis homo primo quidem divino auxilio, secundo autem etiam auxilio humano, quia homo est naturaliter animal sociale, eo quod sibi non sufficit ad vitam."*

4 *Summa Theol.*, 2a 2ae, qu. 109, art. 3, ad 1: *"Quia homo est animal sociale, naturaliter unus homo debet alteri id, sine quo societas humana servari non posset. Non autem possent homines ad invicem convivere, nisi sibi invicem crederent tamquam sibi invicem veritatem manifestantibus. Et ideo virtus veritatis aliquo modo attendit rationem debiti."*—Cfr. Hirscher, *Die christliche Moral*, Vol. III, pp. 274 sqq.

5 Eph. IV, 25: *"Propter quod deponentes mendacium, loquimini veritatem unusquisque cum proximo suo: quoniam sumus invicem membra."*—Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 114, art. 2, ad 1: *"Quia homo naturaliter est animal sociale, debet ex quadam honestate veritatis manifestationem aliis hominibus, sine qua societas hominum durare non posset. . . . Non posset homo vivere in societate sine veritate."*

city, which consequently is a postulate of the moral order or, in other words, a natural duty. But it is more than that: it is also a supernatural duty, enforced by Revelation. [6]

Veracity as a duty has a positive as well as a negative side. Positively, it obliges a man to tell the truth; negatively, it obliges him not to lie.

a) As a *positive duty* veracity obliges not absolutely, but merely in a conditional way; that is to say, we are not bound to tell our fellowmen all we know, but to reveal our thoughts to them only when obliged to do so by strict justice (as when questioned by legitimate authority) or by charity (as when it becomes necessary to uncover a harmful error or to aid an innocent man in obtaining his release from prison).

We are allowed to *withhold the truth* when we are not under positive obligation to reveal it and when to speak out would cause harm and inconvenience to ourselves. It is permitted to feign sleep or death in order to escape being murdered, to disguise oneself to avoid danger, and to dress poorly in order to conceal one's wealth or to avoid inconvenience or annoyance. By such acts one merely withholds facts or conditions which one is not obliged to reveal and allows others rather to deceive themselves. Even when asked by

6 Ex. XX, 16; Lev. XIX, 11; Ps. XIV, 3; XXX, 24; Zach. VIII, 16, 19; Prov. VI, 16 sq.; XII, 22; Eccl. IV, 30; Matth. V, 37; 2 Cor. VI, 7; Eph. IV, 25; VI, 14.

legitimate authority, one who is accused of a crime may refuse to confess if he can do so without being guilty of positive or negative untruth and without violating commutative justice, *i. e.,* without seriously injuring his fellowmen, for instance, by causing an innocent person to be condemned.

Finally, there is the duty of not revealing to others what has been entrusted to us as a secret, or which we have bound ourselves by a promise or by the assumption of an office to keep to ourselves. Thus priests, physicians, counsellors-at-law, and editors are not allowed to divulge secrets they have learned in the exercise of their profession.

Besides this there is the general duty binding every Christian to guard his tongue at all times and to avoid useless or frivolous gossip, mindful of the fact that on the day of judgment he shall have to give an account of every word he has uttered.[7]

A higher degree of veracity is *frankness* or *simplicity of heart* (*simplicitas*), which consists in habitually saying what one thinks, without reserve, exaggeration, or ulterior motive.[8] Sim-

7 Matth. XII, 36; Jas. I, 19; III, 5 sqq.

8 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 109, art. 2, ad 4: *"Simplicitas dicitur per oppositum duplicitati, quâ scilicet aliquis aliud habet in corde et aliud ostendit exterius, et sic simplicitas ad hanc virtutem [veritatem] pertinet. Facit autem intentionem rectam, non quidem directe (quia hoc pertinet ad omnem virtutem), sed excludendo duplicitatem, quâ homo unum praetendit et aliud intendit."*

plicity differs from veracity only in concept (*in ratione*), as the former has reference to the agreement between a sign and that which it signifies, while the latter aims at harmonizing the internal intention with its external expression. [9] It is simplicity that constitutes the child-like disposition so highly extolled by our Divine Lord in conjunction with prudence. Simplicity renders the soul receptive to the influence of grace, fills the heart with joy, and is a mark of supernatural perfection.[10]

The vice opposed to simplicity is *duplicity, i. e.,* deceitfulness in character, speech, or conduct, more commonly called *double-dealing.*

b) On the *negative* side the duty of veracity or truthfulness binds absolutely,—that is to say, we are not permitted, under any circumstances and for any reason, to lie, *i. e.,* knowingly to tell an untruth in order to deceive others. Ecclus. VII, 14: "Be not willing to make any manner of lie: for the custom thereof is not good." [11]

Readings.—Hugh of St. Victor, *Summa Sent.,* tr. 4, c. 5 (Migne, *P. L.,* CLXXVI, 122 sqq.).—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 109 (Rickaby, *Aquinas Ethicus,* II, 212 sqq.).—St.

9 *Ibid.,* qu. 111, art. 3, ad 2: *"Virtus simplicitatis est eadem virtuti veritatis, sed differt solâ ratione, quia veritas dicitur secundum quod signa concordant signatis, simplicitas autem dicitur secundum quod non tendit in diversa, ut scilicet aliud intendat interius et aliud praetendat exterius."*

10 Prov. XI, 20; XXVIII, 18; Matth. X, 16; XVIII, 3.

11 Ecclus. VII, 14. Cfr. Ex. XXIII, 7; Eph. IV, 25; Col. III, 9.

Bonaventure, *Comment. in Sent.*, III, dist. 38 (*Opera Omnia*, III, 836 sqq.)—Kössing, *Über die Wahrheitsliebe*, pp. 1 sqq., 55 sqq. —J. Schwane, *Die Gerechtigkeit*, pp. 124 sqq.—H. Noldin, *Summa Theol. Mor.*, Vol. II, p. 647.—Jos. Mausbach, *Catholic Moral Teaching and Its Antagonists* (tr. by A. M. Buchanan; N. Y. 1914, pp. 113 sqq.)—Jos. Rickaby, S.J., "The Catholic Doctrine of Lying and Equivocation," in *Political and Moral Essays*, N. Y. 1902, pp. 215–233.—Th. Meyer, S.J., *Inst. Iuris Nat.*, Vol. II, pp. 60 sqq.

SECTION 5

THE SIN OF LYING

1. DEFINITION.—To lie is knowingly to tell an untruth in order to deceive others.[1]

To constitute a lie, the false declaration, whether made in word or deed, must be opposed to the interior conviction or belief of him who makes it (*enuntiatio contra mentem*), and further, it must be inspired by the intention (*voluntas fallendi*) of deceiving and misleading others, especially those who have a right to know the truth.

The *matter* of a lie (*materia*), therefore, is the untruth uttered,—not objectively, however, but subjectively, *i. e.*, as opposed to that which one knows or believes to be true.

Consequently, an objectively false statement

1 St. Augustine, *De Mendacio*, c. 4, n. 5: *"Utrum mentiatur quisquis fallendi non habet voluntatem . . . et utrum mentiatur quisquis verum volens enuntiat causâ fallendi, dubitari potest. Nemo autem dubitat mentiri eum, qui volens falsum enuntiat causâ fallendi; quapropter enuntiationem falsam cum voluntate ad fallendum prolatam manifestum est esse mendacium."* (Migne, *P. L.*, XL, 491).—IDEM, *Contra Mendac.*, c. 12, n. 26 (*P. L.*, XL, 537).—IDEM, *Enchirid.*, c. 22: *"Omnis, qui mentitur, contra id, quod animo sentit, loquitur voluntate fallendi."* (*P. L.*, XL, 243). —Cfr. Gury, *Comp. Theol. Mor.*, I, n. 453: *"Mendacium est locutio contra mentem cum voluntate fallendi."*—Cfr. P. Ch. Kierkegaard, *De Notione atque Turpitudine Mendacii*, Göttingen 1829.

which one believes to be true is no lie, and, *vice versa,* an objectively true statement which one believes to be false, *is* a lie. It is the *intention* that constitutes a lie (*ream linguam non facit nisi mens rea*).[2] One who makes a false statement which he believes to be true, does not wish to deceive others, but is himself deceived.[3]

Substantially false statements which are not inspired by the intention of deceiving others (*e. g., symbolic or figurative locutions, fables, fairy tales, novels, dramas, riddles, etc.,* in fact

2 J. Mausbach, *Catholic Moral Teaching,* pp. 108 sqq.—St. Augustine, *Serm.,* 180 (*al.* 28 *De Verbis Apost.*), c. 2. n. 2 (Migne, *P. L.,* XXXVIII, 973); *De Mendacio,* c. 3, n. 3: *"Ille mentitur qui aliud habet in animo et aliud verbis vel quibuslibet significationibus enuntiat. Unde etiam duplex cor dicitur esse mentientis, id est, duplex cogitatio: una rei eius quam veram esse vel scit vel putat et non profert, altera eius rei quam pro ista profert, sciens falsam esse vel putans. Ex quo fit, ut possit falsum dicere non mentiens, si putat ita esse ut dicit, quamvis non ita sit, et ut possit verum dicere mentiens, si putat falsum esse et pro vero enuntiat, quamvis revera ita sit ut enuntiat. Ex animi enim sui sententia, non ex rerum ipsarum veritate vel falsitate mentiens aut non mentiens iudicandus est. Potest itaque ille qui falsum pro vero enuntiat, quod tamen verum esse opinatur, errans dici et temerarius, mentiens autem non recte dicitur, quia cor duplex, quum enuntiat, non habet nec fallere cupit, sed fallitur. Culpa vero mentientis est in enuntiando animo suo fallendi cupiditas, sive fallat, quum ei creditur falsum enuntiati, sive non fallat, vel quum ei non creditur vel quum verum enuntiat voluntate fallendi, quod non putat verum. Quod quum ei creditur, non utique fallit, quamvis fallere voluerit:—nisi hactenus fallit, quatenus putatur ita etiam nosse vel putare ut enuntiat."—Ibid.,* n. 4: *"Quamquam subtilissime quaeratur, utrum, quum abest voluntas fallendi, absit omnino mendacium."* (Migne, *P. L.,* XL, 488).—Idem, *Enchir.,* c. 22: *"Omne mendacium ideo dicendum esse peccatum, quia homo non solum quando scit ipse quod verum sit, sed etiam si quando errat et fallitur sicut homo, hoc debet loqui quod animo gerit, sive illud verum sit sive putetur et non sit."* (*P. L.,* XL, 243).

3 *Ibid.,* c. 18: *"Nemo mentiens iudicandus est, qui dicit falsum quod putat verum, quoniam quantum in ipso est, non fallit ipse, sed fallitur."* (*P. L.,* XL, 240).

poetry in general) do not partake of the formal character of lies because they are designed merely to veil, sugar-coat or elucidate, not to misrepresent, the truth.

Materially untrue phrases and expressions of which everybody knows that they are not to be taken literally, or the true sense of which is sufficiently revealed by the context or the accompanying circumstances, are not properly lies. To this category belong the complimentary phrases customary in polite society, figurative or metaphorical locutions, such as hyperboles, irony, etc., as well as stratagems and deception in war, at games, and on the theatrical stage.

St. Thomas teaches that the intention to deceive does not belong to the essence of a lie, but rather to its perfection.[4] Others hold a different view.[5] According to the Angelic Doctor all that is required to constitute a lie is the intention of telling an untruth. A common example adduced by the defenders of this theory is that of the convicted criminal who denies his guilt. But what is it that inspires his persistent lying if not the intention of deceiving others? Purposely telling an untruth always includes, at least indirectly, the intention to deceive. If

4 *Summa Theol.*, 2a 2ae, qu. 110, art. 1: *"Non pertinet ad speciem mendacii, sed ad quandam perfectionem ipsius."* On the controverted question whether the purpose to deceive belongs to the essence of lying, the student may consult J. Schwane, *Die Gerechtigkeit*, pp. 133 sq., and Jos. Rickaby, S.J., *Political and Moral Essays*, N. Y. 1902, pp. 215 sqq.

5 *"Enuntiatio falsi (falsa) cum voluntate ad fallendum prolata."*—Cfr. Kössing, *Ueber die Wahrheitsliebe*, p. 166.—St. Augustine, *De Mendac.*, c. 3, n. 3: *"Non utique fallit, quamvis fallere voluerit."* (*P. L.*, XL, 489).

the object is not achieved, this is not owing to the liar or his false statement, but solely to the will of the hearer. A lie, therefore, is more correctly defined as telling an untruth with the intention of deceiving others. It must be admitted, at any rate, that the indirect or interpretative intention to deceive is practically always present in the mind when a man lies, because deception is the natural result of lying, though the actual accomplishment of this purpose is not required for the essence of lying, so that he who knowingly tells an untruth is guilty of lying even though he accidentally finds no credence among his hearers.[6]

The notion of a lie, therefore, in contradistinction to that of error, includes (a) the conscious telling of an untruth and (b) the intention to deceive. In popular parlance even objective untruths which are not intended to deceive, are often called lies, *e. g.,* historical lies. But such phrases are misleading. A statement may be an untruth without being a lie. The so-called lies of history are for the most part merely errors and blunders.

2. Division.—a) A lie may either be uttered in words or indicated by signs. A verbal lie consists either in the denial of a truth (*falsiloquium*) or the assertion of an untruth with the will to deceive (*mendacium*).

Other species of lying are simulation (*simulatio*) and hypocrisy (*hypocrisis*),[7] which may be

6 M. Cronin, *The Science of Ethics,* Vol. II, pp. 67 sqq.—Lehmen, S. J., *Lehrbuch der Philosophie,* Vol. IV, 2nd ed., p. 170.

7 St. Augustine, *Enarr. in Ps.,* 63, n. 11: "*Simulata innocentia*

defined as the act of assuming a false form, appearance, character, or condition in order to deceive others as to one's real thoughts or intentions, and especially in regard to one's true character. Simulation frequently takes the form of *sanctimony,* an assumed or outward show of probity,[8] exemplified by the kiss with which Judas betrayed Christ.[9]

A subspecies of hypocrisy is *flattery,* which consists in giving insincere, false, or exaggerated praise to others with a view to influencing their future conduct. As a rule flattery is inspired by purely egotistic motives, and partakes of the malice of such motives.[10]

b) According to the purpose for which they are uttered, or the effect which they produce, lies are divided into several categories. There is, for instance, the jocose lie (*mendacium iocosum*); the officious or courtesy lie (*mendacium officiosum*), inspired by a desire to ward off injury or incon-

non est innocentia; simulata aequitas non est aequitas, sed duplex iniquitas, quia et iniquitas est et simulatio." (Migne, *P. L.,* XXXVI, 765).—IDEM., *Serm.,* 355 (*al.* 49 *de Divers.*), c. 3, n. 6: *"Malum est cadere a proposito sanctitatis, sed peius est simulare propositum."* (Migne, *P. L.,* XXXIX, 1575).—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 111, art 1: *"Sicut veritati opponitur, quod aliquis per verba exteriora aliud significet, quam quod habet apud se, quod ad mendacium pertinet, ita etiam opponitur veritati, quod aliquis per aliqua signa factorum vel rerum aliquid significet contrarium eius, quod in eo est, quod proprie simulatio dicitur. Unde simulatio proprie est mendacium quoddam in exteriorum signis factorum consistens."*

8 Matth. VI, 1–6, 16; cfr. 2 Cor. XI, 13–15.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 111.

9 Matth. XXVI, 48–50; Luke XXII, 47 sq.

10 Prov. XXIX, 5; Acts XXIV, 1 sqq.

venience, and the damaging or pernicious lie (*mendacium damnosum sive perniciosum*), dictated by a desire to injure others in life, property, or good name, perhaps even to prevent them from attaining eternal salvation.[11] In lies of this kind the predominant note is not the intention to deceive, but the will to injure others, spiritually or materially.

3. The Sinfulness of Lying.—a) No statement or act that deserves the name of a "lie" in the formal and proper sense, can be justified by the end for which it is uttered or performed, be that end ever so noble or innocent. Consequently, all kinds of lies, including those told in jest, are strictly forbidden. This is the plain teaching of both the Old and the New Testament. Even if the eighth commandment: "Thou shalt not bear false witness against thy neighbor," referred only to false testimony in the narrower sense of the word, it is more widely applied in Lev. XIX, 11: "You shall not lie, neither shall any man deceive his neighbor." [12] Again and again

11 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 110, art. 2.

12 St. Augustine, *Enchir.*, c. 22: *"Nec ideo ullum mendacium putandum est non esse peccatum, quia possumus aliquando alicui prodesse mentiendo."* (Migne, *P. L.*, XL, 242).—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 110, art. 3: *"Omne mendacium est peccatum."*—*Ibid.*, ad 4: *"Mendacium non solum habet rationem peccati ex damno, quod infertur proximo, sed ex suâ inordinatione. Non licet autem aliqua illicitâ inordinatione uti ad impediendum nocumenta et defectus aliorum. . . . Et ideo non est licitum mendacium dicere ad hoc, quod aliquis alium a quocunque periculo liberet."*

Holy Scripture warns men not to lie [13] and threatens divine vengeance upon those who commit this sin.[14] Among the "six things which the Lord hateth," the Book of Proverbs mentions "a lying tongue." [15] The same book declares that "lying lips are an abomination to the Lord." [16] Jesus Christ condemns lying, attributes it to the devil as the "father of lies," [17] and challenges His enemies to convict Him of any sin against the truth.[18] St. Paul admonishes the Ephesians to "put away lying and to speak the truth." [19] St. James says: "Be not liars against the truth." [20] St. John says that liars shall have their portion with whoremongers, sorcerers, and idolaters "in the pool burning with fire and brimstone, which is the second death." [21] The story of Ananias and Saphira,[22] who brazenly lied to St. Peter and were struck dead on the spot, is too well known to require repetition.

b) The sinfulness (*malitia*) of lying arises principally from the fact that a lie, being a contradiction between thought and speech, constitutes an abuse of language, which is the principal means of intellectual intercourse and was divinely bestowed upon men to enable them to

13 Ex. XX, 16; cfr. Matth. XXVI, 59 sqq.
14 Ps. V, 7.
15 Prov. VI, 17 sq.
16 Prov. XII, 22; cfr. Ecclus. VII, 14; XX, 26-28; XXV, 3 sq.
17 John VIII, 44; cfr. J. E. Belser, *Das Evangelium des hl. Johannes*, pp. 291 sqq.
18 John VIII, 46.
19 Eph. IV, 25; cfr. Col. III, 9.
20 Jas. III, 14.
21 Apoc. XXI, 8; cfr. XXII, 15.
22 Acts V, 1 sqq.

communicate their thoughts to one another. Untruthfulness counterfeits this spiritual medium of exchange and, by making it impossible for men to live together in mutual trust and confidence, violates the divinely established order of things and the law of nature. Therefore the Apostle exhorts the Ephesians to "put away lying and to speak the truth," because "we are members one of another." [23]

Lying is sinful also for the reason that it violates or destroys the true dignity of man, which consists in his being an image of God. God is "the God of truth," [24] and if we lie, we become dissimilar to Him, or rather like to the devil, who is a liar from the beginning and has not the truth.[45]

Finally, lying is sinful because it is opposed to charity or love of neighbor. It robs men of a good to which they have a just claim,—*viz.*: the truth,—and substitutes for that good an evil, *i. e.*, error. Even if in some cases the truth is not esteemed as a real good, and error is not regarded as an evil, but rather as a service rendered to another, this does not change the nature of

23 Eph. IV, 25. Cfr. St. Augustine, *Enchir.*, c. 22: *"Et utique verba propterea sunt instituta, non per quae se homines invicem fallant, sed per quae in alterius quisque notitiam cogitationes suas perferat. Verbis ergo uti ad fallaciam, non ad quod instituta sunt, peccatum est."* (Migne, *P. L.*, XL, 243).—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 110, art. 3: *"Mendacium est malum ex genere; est enim actus cadens super indebitam materiam. Quum enim voces naturaliter sint signa intellectuum, innaturale est et indebitum, quod aliquis significet id, quod non habet in mente."*

24 Ps. XXX, 6.

25 John VIII, 44; cfr. John XIV, 6; XVII, 17; Apoc. III, 7, 14.

truth or of its contrary. Lying always embodies a violation of charity and involves contempt of others.

"You ask what costs you more dearly, falsehood or the truth? I answer: falsehood, because falsehood costs you your very ego, whereas the truth can at most rob you of happiness," says the poet Hebbel. The well-known anecdote told of St. Thomas is purely legendary, but it conveys an important lesson. "Do you see that ox flying up there?" cried one of his fellow students. When St. Thomas strained his eyes to espy the strange phenomenon, his companion scoffed at his simplicity. The Saint censured him and said: "I would rather believe that an ox could fly, than that a Catholic would tell a lie." [26] But St. Thomas might have known that it was a hoax. To test another's wit is not deception.

c) Though every lie is a sin, not every lie is a mortal sin.[27] The gravity or guilt of a lie is to be gauged by the general criteria of mortal and venial sin, by its subject-matter, by the objective and subjective importance of the truth involved, by the end or object aimed at, and by the circumstances of the case.

As regards the subject-matter, the denial of a revealed truth of great importance for the eternal or temporal welfare of man is always a mortal sin because it involves serious dishonor to God and a grave violation of charity and justice.

26 A. Scherer and J. B. Lampert, *Exempellexikon*, Vol. III, 2nd ed., Freiburg i. B. 1908, p. 191.

27 St. Thomas, *Summa Theologica*, 2a 2ae, qu. 110, art. 4. Cfr. Kössing, *Ueber die Wahrheitsliebe*, pp. 167 sqq.

The end or purpose for which a lie is told may be serious or trivial. A *jocose lie,* or one told to get out of a scrape, may generally be classed as a venial sin.[28] But there are cases in which the objective and particularly the subjective momenta weigh heavily in the scale. A lie may be inspired by a totally corrupt motive and, aside from the scandal given, may have incalculable consequences. There are jocose lies that hurt keenly and others which partake of blasphemy, and though not every joking prevarication is a lie, yet every jocose lie, no matter how harmless it appears to be, is incompatible with the dignity of a Christian and the respect he owes the truth. It must also be taken into consideration that many of the *"little white lies"* of social intercourse are apt to cause grave temporal and spiritual damage to others. The motive of charity by which these lies are often inspired, may diminish their guilt, yet pious frauds can never promote the cause of truth or justice, the welfare of Church or State, or the true ends of scholarship or science.[29]

Luther excused "fat lies" if the cause of the Gospel could be promoted thereby. Who invented the maxim: The end justifies the means?

Let us always remember the query of St. Paul: "Shall we do evil that there may come good?" [30] and the pious

28 St. Augustine, *Enarr. in Ps.,* V, n. 7: *"Duo sunt omnino genera mendaciorum, in quibus non magna culpa est, sed tamen non sunt sine culpa, quum aut iocamur aut ut prosimus mentimur. Illud primum in iocando ideo non est perniciosissimum, quia non fallit. Novit enim ille, cui dicitur, ioci causâ esse dictum. Secundum autem mitius est, quia retinet nonnullam benevolentiam."* (Migne, *P. L.,* XXXVI, 86).

29 Cicero, *De Orat.,* II, 15: *"Quis nescit primam esse historiae legem, ne quid falsi dicere audeat, deinde ne quid veri non audeat? ne qua suspicio gratiae sit in scribendo, ne qua simulatio?"* These words were quoted by Leo XIII in his letter of Aug. 18, 1883, to Cardinal Hergenröther *et al.,* as a norm for all Catholic writers of history.

30 Rom. III, 8.

exclamation of holy Job: "Hath God any need of your lie, that you should speak deceitfully for him." [31] A Catholic must ever be firmly convinced that no lie can be of real advantage and that God will turn the damage which one fears from the truth into an advantage. "We know that to them that love God, all things work together unto good." [32]

When a conflict arises between duty and truth on the one side and various other interests on the other, the injury done to the soul by a lie cannot be compared to any temporary disadvantage. In a conflict between truth and charity, *e. g.,* in the case of a sick person or a lunatic, a conscientious man will always, if necessary, find a way to disguise the truth so that it will not bear the character of a lie. In such cases it should be considered that, on the one hand, by lying to the sick we are apt to undermine their confidence in the physician and those who have them in charge, hinder a correct treatment, and run the danger that the patient may die unprepared, while, on the other hand, persons who have not the full use of reason are rendered suspicious and distrustful if those in whom they have confidence lie to them, and are thus often impeded in their progress towards recovery.

There is a well-known story told by the younger Pliny of the Roman matron Arria, who, having lost her son by sickness, and all but lost her husband, used to tell the latter in his convalescence, when he enquired about the boy: "Oh, he has slept well; he has had quite an appetite." Then she would rush out of the room to hide her tears. Father Rickaby, commenting on this story, says: "I will not vouch for the objective morality of these replies: they may or may not be justified as broad

[31] Job XIII, 7. [32] Cfr. Rom. VIII, 28.

mental reservations. But they are much more easily justified, if the whole harm of lying consists in the hearer's unwillingness to suffer a deception rendered necessary by the state of his health. The same doctrine would justify other speeches of a much more objectionable character. It would, in fact, contain the reaffirmation of the old Greek position, that deceit is a medicine and a drug, and may be administered ἐν φαρμάκου εἴδει, especially by persons in authority, wherever they judge that it will work a wholesome effect, and wherever the person deceived is not unwilling, or at least ought not to be surprised or complain, considering the circumstances. But this would be to throw the door open wide to the whole crowd of official, officious, and jocose lies. Untruths told for a purpose to enemies, to children, to subjects, to servants; pleasant fictions to gratify a friend; hoaxes unlimited, where we think the victim ought not much to mind,—these will be withdrawn from the category of lying, or will be registered as white lies and lawful. Worst of all, if the whole harm of lying is in the unpleasant effect wrought upon the deceived hearer, or in the scandal and bad consequences to society at large, it is not clear that lying is impossible to God; and our faith, based on the divine veracity, is shaken to the foundation. God, as Master, might bid the deceived listener bear the mortification and shame of being duped. He might by His providence prevent any scandal or general bad consequences to society; or, as Sovereign, He might impose or permit such consequences, as He sends or permits a pestilence. The Lord of life and death, who commanded Isaac to be slain, and who daily 'taketh away the spirit of princes,' is not to be restrained from being a deceiver by the mere reluctance of His creatures, unless there be

some element in the divine nature itself which makes it utterly impossible for God to deceive and speak false. Undoubtedly there is such an element. It lies even at the root of the sanctity of God. God is holy in that, being by essence the fullness of all Being and all Goodness, He is ever true to Himself in every act of His understanding, of His will, and of His power. By His understanding He abidingly covers, grasps, and comprehends His whole Being. With His will He loves Himself supremely. His power is exercised entirely for His glory—entirely, but not exclusively, for God's last and best external glory is in the consummated happiness of His creatures. Whatever God makes, He makes in His own likeness, more or less so according to the degree of being which He imparts to the creature. And as whatever God does is like Him, and whatever God makes is like Him, so whatever God says is like Him. His spoken word answers to His inward word and thought. It holds of God, as of every being who has a thought to think and a word to utter:—

> 'To thine own self be true,
> And it must follow, as the night the day,
> Thou canst not then be false to any man.'" [33]

Lies told for the purpose of injuring others are, as a rule, grievous sins, though subject to *parvitas materiae*. The guilt in such cases is not to be measured by the damage calculated or foreseen, but primarily and above all by the malice or lack of charity which inspired them. Even a slight injury may be done with great malice.

The principal circumstances to be considered in weighing the guilt of a lie are the scandal given and the importance of veracity as a pillar of social intercourse.

[33] Rickaby, *Political and Moral Essays*, pp. 227 sqq.

d) By frequent lying a man forms the habit of *mendacity,* which consists in the inclination and a certain aptitude to tell lies. This vice gradually entails not only absolute indifference to truth, but a real love of lying for its own sake, which sometimes results in a sort of obsession of the soul by the evil spirit. "Why dost thou glory in malice, thou that art mighty in iniquity? All the day long thy tongue hath devised injustice, as a sharp razor thou hast wrought deceit. Thou hast loved malice more than goodness, and iniquity rather than to speak righteousness. Thou hast loved all the words of ruin, O deceitful tongue." [34]

St. Augustine calls the controversy that was waged in his time concerning the ethics of lying *"magna quaestio, latebrosa nimis,"* and treats it as a problem for the solution of which the most learned men have labored in vain.[35] It follows that at the time when the Saint wrote, this part of Catholic moral teaching had not yet been fully developed. In practice, however, lying had been condemned absolutely and unreservedly by Clement of Rome, the Shepherd of

34 Ps. LI, 3–6.

35 *De Mendac.,* c. I, n. 1; c. XVIII, n. 38.—Idem, *Contra Mendac.,* c. XV, n. 33 (Migne, *P. L.,* XL, 487, 513, 541).—V. Cathrein, S. J., *Moralphilosophie,* Vol. II. 5th ed., pp. 82 sqq.—Kössing, *Ueber die Wahrheitsliebe,* pp. 174 sqq.

Hermas, Justin Martyr, Lactantius, and St. Basil.[36]

READINGS.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 110–111, 115 (Rickaby, *Aquinas Ethicus,* Vol. II, pp. 13 sqq.).—Th. Meyer, S.J., *Inst. Iuris Nat.,* Vol. II, pp. 55 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 433 sqq.—Kössing, *Ueber die Wahrheitsliebe,* pp. 161 sqq.—V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 82 sqq.—G. Sodeur, *Luther und die Lüge,* Leipsic 1904, pp. 5 sqq.—H. Grisar, *Luther* (tr. by Lamond, London 1913 sqq.) Vol. I, pp. 335 sq.; II, 15 sqq., 49, 385 sqq., 392; IV, 28 sq., 41, 80–178; V, 537 sqq., VI, 513 sqq.—H. Noldin, S.J., *Summa Theol. Mor.,* Vol. II, pp. 649 sqq.—Jos. Rickaby, S.J., *Political and Moral Essays,* N. Y. 1902, pp. 215 sqq.—IDEM, *Moral Philosophy,* 4th ed., London 1918, pp. 224 sqq.—J. E. Ross, C.S.P., *Christian Ethics,* N. Y. 1919, pp. 141 sqq.—A. Vermeersch, S.J., in the *Gregorianum,* Rome, Jan., 1920.—J. Brodie-Brosnan, "Father Vermeersch on the Malice of Lying," in the *Irish Ecclesiastical Record,* Sept., 1921, No. 645, pp. 266–274.

[36] On the veracity of God, cfr. Pohle-Preuss, *God: His Knowability, Essence, and Attributes,* pp. 236 sqq.; Kössing, *Ueber die Wahrheitsliebe,* pp. 186 sqq.

SECTION 6

THE DUTY OF KEEPING SECRETS

Neither the duty of telling the truth nor the virtue of veracity, demand that we disclose everything that we know always or to all men. On the contrary, we are sometimes bound to withhold knowledge or information from others.[1] This brings us to the consideration of secrets.

1. A secret (*secretum*) is something hidden or concealed, or, more properly, knowledge or information which we are in duty bound to keep from others.

There are various kinds of secrets.

a) A secret is called *natural* (*secretum naturale*) if a man has accidentally or inadvertently or purposely through his own efforts (*secretum extortum*) obtained a knowledge of something which he may not reveal to others without violating justice or charity, or which the one concerned has a right to hide. The latter category includes

1 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 40, art. 3: *"Esset inordinata voluntas, si aliquis vellet nihil sibi ab aliis occultari."*—Gury, *Comp. Theol. Mor.*, Vol. I, n. 484: *"Secretum est cognitio rei alicuius, quae ex natura sua aut speciali contractu occulta servari debet."*

everything that cannot be revealed without injury to the honor, reputation, or property of others. If a crime can be prevented, or an injustice righted by the revelation of a secret, it may be revealed, but only to those who are in a position to act effectively, for instance, parents and superiors.

b) The duty of keeping a secret sometimes rests upon positive grounds, as when a secret has been communicated or entrusted to one in an official capacity, or for safe-keeping under promise of silence. To the former class (*secreta commissa*) belong the so-called official or professional secrets, *i. e.*, communications made to a man solely because of his official station or office, or communications made because of knowledge he has obtained by means of official functions or by participation in debates or trials.

c) The *promised secret* (*secretum promissum*) arises from the fact that one has, through one's own efforts, obtained a knowledge of a secret and then bound himself by a promise to keep it from others.

If a man comes for professional advice to another, as to a lawyer or a doctor, or simply to a friend for moral counsel, and in order thereto imparts to him natural secrets, those secrets, as they are received and held by the person consulted, are called *secrets of trust* or *privileged secrets,* be-

cause, in contradistinction to natural secrets and secrets of promise, they need not be delivered up at the demand of an authority empowered to inquire in the department in which the secret lies.

The highest kind of privileged secret is that called *sacramental.* It is protected by the seal of confession (*secretum sacramentale, sigillum confessionis*) and arises from the Sacrament of Penance.[2]

2. The duty of keeping secrets needs to be more accurately circumscribed.

a) Broadly speaking, a man is bound to keep every secret of which he has knowledge. To divulge a secret of any kind without urgent reason is a sin against both charity and justice, the guilt of which is measured, first, by the malice involved in the act, and, secondly, by the importance of the secret divulged and the injury inflicted by its revelation.

It is sinful to induce others to violate the duty of secrecy, especially if it is done maliciously or by force.

More particularly, the obligation of secrecy is gauged by the nature of the secret. The *seal of confession* by its very nature binds absolutely and always. So-called *natural secrets* are based upon the obligation of justice, which man owes

2 Cfr. this *Handbook,* Vol. II, pp. 167 sqq.—J. P. Gury, *Comp. Theol. Mor.,* Vol. I, n. 485, 488; *Irish Theol. Quarterly,* Vol. V (1910), No. 17; Vol. VIII (1913), No. 29, No. 31.

his fellowmen, and which admits of exceptions for just reasons, and does not exclude silent reservation.

Silent reservation is admissible also in regard to committed or entrusted secrets, nay, even in regard to secrets promised under oath.[3]

The obligation of keeping *professional* or *official secrets* rests upon fidelity, without which the social order could not exist, and can therefore be modified only by the exigencies of public welfare.

b) Apart from the seal of confession, which, as we have said, binds absolutely and at all times, the obligation of keeping a secret ceases whenever there is a just cause or excuse for disclosing the same, that is to say, when the secret has become publicly known without the co-operation of him who knows of it, and the welfare of any of the parties concerned in it or the public interest require that it be revealed. This would be the case,

3 J. P. Gury, *op. cit.*, I, n. 486: *"Quaeritur I°: Quaenam sint causae iustae secretum manifestandi? Respondetur:* (1) *Consensus recte praesumptus illius, cuius interest secretum occultare;* (2) *Divulgatio rei aliunde facta;* (3) *Damnum ex secreto secuturum reipublicae vel privatis; immo urget aliquando gravis obligatio secretum revelandi, praesertim ratione boni publici. Quaeritur II°: An possis revelare secretum, si promiseris illud servare etiam cum vitae iactura? Respondetur:* (1) *Affirmative, si illud exigat bonum commune; quia promissio facta contra bonum commune est nulla;* (2) *Negative, si agatur de tuo proprio damno simpliciter gravi, quia praestat servare secretum hoc speciali contractu promissum. Negative etiam probabilius, si agatur de damno tuo extremo, quia iuri tuo expresse renuntiasti nec illicitum est, omittere vitae conservationem, ut promissum serves. Attamen S. Alphonsus* [l. III, n. 971, ed. Gaudé, II, 361] *oppositum satis probabile merito dicit."*—*Reg. Iuris in VI° Decr. Bonifacii VIII,* n. 69; *"In malis promissis fidem non expedit observari."*—Cfr. this *Handbook,* Vol. IV, p. 260, n. 16.

for instance, if an innocent man were to suffer serious injury unless a secret were disclosed or if a criminal could be reformed by divulging it.

Generally speaking, the obligation of keeping a secret does not hold before the law if the secret involves matters which may not be legitimately concealed, *e. g.*, unjust plots against others or against the commonwealth, abuses and faults which cannot be corrected without publicity, etc. In such cases it makes no difference whether an oath is involved or not.

Parents, guardians, teachers, and other legitimate superiors are allowed, by opening letters or by other means, to procure a knowledge of things which their children or subjects illegitimately wish to conceal from them.[4] The public authorities may, for reasons strong enough to justify the use of force, examine the correspondence of suspected persons.

Much has been said of late against *"secret diplomacy,"* and justly so; but the fact remains that every government is allowed, nay obliged, to keep secret certain things which cannot be divulged without danger to the common weal. But those in authority may not employ such secrets to cover dishonest transactions, or to create false opin-

4 Gury, *Comp. Theol. Mor.*, I, n. 487: *"Quaeritur an graviter peccet aperiens aut legens alterius litteras? Respondetur. Affirmative per se. Ratio est, quia iure naturali et iure gentium datur obligatio secreta litterarum illaesa relinquendi; secus commercium humanum pessumdaretur. Excipe casus sequentes: 1. Si adsit consensus tacitus aut praesumptus illius, qui scribit, vel illius, ad quem litterae mittuntur; 2. Si cognoscetur vel praesumatur litteras continere res minoris momenti; 3. Si iusta de causa fiat, v. g. ad damnum publicum aut privatum avertendum; 4. Si litterae ex levitate aut mera curiositate aperiantur."*— Cfr. St. Alphonsus, *Theol. Mor.*, l. V, n. 70 (ed. Gaudé, II, 755).

ions, or to spread lying reports, or to engage in mendacious propaganda either at home or abroad, nor, in general, use any means apt to injure or undermine the public confidence.

For the individual it is not only a command of natural, and especially of Christian, prudence, but it may even be a grave duty to refuse to be made the repository of secrets which do not concern him, or to pry into the secrets of others.

"The main art of keeping a secret is not to talk about it. If a man is asked an awkward question, and sees no alternative but to let out or lie, it is usually his own fault for having encouraged the questioner up to that point. A wise man lets drop in time topics of conversation which he is unwilling to have pressed. He is never the first to introduce such topics. It is said of the ploughman in Ecclesiasticus, that his story is of the sons of bulls—*enarratio eius in filiis taurorum.* After all, cattle have no secrets, but men and women have." [5]

Without strict necessity, letters should not be opened, nor should *family secrets* be exposed, or if necessity demands that it be done, the duties enjoined by truth and fidelity should be strictly adhered to.

Parents, guardians, and superiors should be cautious in making use of their right to pry into the secrets of their subjects, for if this is done without a just cause, it will encourage rather than stop underhand dealing.[6]

For the rest it is well to remember that, in the words of a famous German poet, "two things are a detriment to him who wishes to ascend the ladder of happiness: namely, keeping silence when it is time to speak, and speaking when it is time to be silent." [7]

5 Joseph Rickaby, S. J., *Political and Moral Essays*, p. 221.

6 Linsenmann, *Moraltheologie*, p. 440.

7 Fr. Bodenstedt.

3. The Means of Keeping a Secret.—A positively untrue statement or denial is illicit, and mere silence often creates unjustifiable suspicion. Consequently, as it is often necessary to keep a secret, both for the sake of individuals and of society at large, moralists have devised ways and means by which illegitimate or curious questions can be evaded without lying or dissimulation. Of these ways and means the principal ones are:

a) *Amphiboly* (ἀμφιβολία, doubt) or *equivocation* (*æquivocatio*), *i. e.*, the use of equivocal or ambiguous expressions with the intention of being misunderstood by others. Usually in an expression of this kind the words reflect the thoughts of the speaker in such a way as to admit of a meaning different from the one that lies on the surface. Hence the speaker is not really the author of the ensuing deception, but the deception is the fault of the hearer, who could have perceived the true meaning had he paid closer attention to the words employed.

b) *Mental reservation* or *interior restriction* (*reservatio sive restrictio mentalis*) may be subdivided into two species, namely:

α) *Pure* mental reservation (*restrictio sive reservatio pure seu stricte sive proprie mentalis*) is the restriction of one's meaning to the proposition as modified by some addition made to it within the mind of the speaker, the literal sense

of which, therefore (*verbum oris*), is true only under the conditions retained in the mind (*verbum mentis*),—as if one, on being asked whether he did a certain thing, were to answer "No," meaning, "Not in the way in which the questioner thinks, or at the time he means, or under the conditions he imagines, etc.,"—modifications which cannot be gathered either from the tenor of his words or the circumstances of the case. Such pure or strict mental reservations are downright lies, because they aim at deception and effectively undermine the mutual confidence without which society can not exist.[8]

β) Mental reservation in a broader sense (*reservatio non pure sive late seu improprie mentalis aut sensibilis*) is practiced if words are employed which are capable of being understood in different senses, either because they are in themselves ambiguous, or because they derive a special meaning from the circumstances of time, place, or person in which they are spoken, or, to put it somewhat differently, if the speaker really means what he says, but expresses himself so guardedly that the person addressed can gather his true intention

8 Gury, *Comp. Theol. Mor.*, I, n. 457: *"Nunquam licet uti restrictione pure seu proprie mentali nec amphibologiâ humano modo non perceptibili; nec a fortiori licet cum iisdem iurare, quia est simpliciter mendacium."*—Cfr. the propositions condemned by Innocent XI, *supra.* Joseph Mausbach, *Catholic Moral Teaching*, pp. 79 sqq.; New York 1914; A. Meyenberg, *Die katholische Moral*, 2nd ed., pp. 180 sqq.; A. Adloff, *Katholische Moral und Sittlichkeit*, Strasbourg 1901, pp. 22 sqq.

only by taking his words in connection with the circumstances of the case. Thus when a servant says that his master is "not at home," the words may mean either that he is absent or that he does not wish to receive visitors.[9] With this kind of reservation, therefore, the true meaning of the speaker is not contained in the bare words, but may and must be gathered from the meaning which the words acquire from the circumstances in which they are spoken. Consequently, broad mental reservation is merely a species of *equivocation,* which, though by some authors called *internal reservation,* is in reality not such, because nothing is concealed.[10]

In English, which is not the language of a Catholic people, and in which words mean, not what we would have them mean, but what they commonly mean in educated non-Catholic society, equivocation denotes a practice which is certainly wrong, and carries all the guilt of lying. "What ordinary Englishmen call equivocation," says Fr. Rickaby, "corresponds to that which Catholic divines know as *pure mental reservation,* and that is a cowardly fashion of lying. Where *æquivocatio* is mentioned with approval in a page of Latin casuistry, the word ought to be translated, *broad mental reservation.* To render it *equivocation* is to create confusion, just as much as if one should render the canonical appeal, *peto*

9 Slater, *Moral Theology,* I, 468.

10 Gury, *Comp. Theol. Mor.,* I, n. 456: *"Ad restrictionem revocantur aequivocationes seu amphibologiae, quae sunt locutiones habentes duplicem sensum principalem, sed unum magis obvium et alterum minus, aut etiam unum spiritualem et alterum literalem."*

apostolos, 'I ask for the Apostles,' or the old French, *entre chien et loup,* 'between a dog and a wolf.' " [11]

Examples of *æquivocatio* are pointed out in Holy Scripture. Thus Abraham and Isaac represented their wives as their sisters, Jacob deceived his father to obtain the paternal blessing,[12] and Judith gained admittance to Holofernes' tent by means of a ruse.[13] But the statements concerned, with the exception perhaps of those attributed to Abraham and Isaac, though literally *mendacia,* are to be regarded rather as *mysteria,*[14] and therefore prove nothing either *pro* or *con* with regard to the question under discussion.

In the New Testament, Christ Himself repeatedly employed broad mental reservation, as when He called John the Baptist "Elias," [15] when He said that the daughter of Jairus was "not dead but sleeping," [16] and when He declared that if the Jews would destroy "this temple" (meaning His body), He would raise it up again in three days.[17] It sounded like a mental reservation when He said that "the Father is greater than I"; [18] that neither the Father nor the Son knows the day or the hour of the Last Judgment; [19] or when He declared that He would not go up to Jerusalem, and then went up anyhow.[20] It is obvious, however, that by employing such

11 *Political and Moral Essays,* pp. 217 sq.

12 Gen. XII, 11–19; XX, 2, 11 sqq.; XXVI, 7; XXVII, 1–35.

13 Judith X, 12 sqq.

14 St. Augustine, *Contra Mendac.,* c. XI, n. 24: *"Iacob, quod matre fecit auctore, ut patrem fallere videretur, si diligenter et fideliter attendatur, non est mendacium, sed mysterium. Quae si mendacia dixerimus, omnes etiam parabolae ac figurae significandarum quarumcunque rerum, quae non ad proprietatem accipiendae sunt, sed in eis aliud ex alio est intellegendum, dicentur esse mendacia, quod absit omnino."* (Migne, *P. L.,* XL, 533).—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 110, art. 3, ad 3.

15 Matth. XI, 14

16 Matth. IX, 24.

17 John II, 19.

18 John XIV, 28.

19 Mark XIII, 32.

20 John VII, 8–10.

ambiguous language, our Lord did not wish to conceal the truth, or to mask His real intentions, but merely to indicate that His words bore a deeper meaning than that which lay on the surface. All that can be concluded from the passages in question is that ambiguous language is not *per se* forbidden. Broad mental reservation, therefore, must not be unreservedly condemned as illicit.[21] However, it is not allowable under all circumstances, but only when (a) it does not embody a positive untruth, as is supposed; (b) when the true nature of the statement is recognizable, and (c) when there is a morally justifiable reason for keeping a secret.[22] Whenever, on the other hand, there is a positive duty to tell the truth, *e. g.*, in taking an oath, testifying in court, making a contract, or instruct-

21 St. Augustine, *Enarr. in Ps.*, V, n. 7: *"Quoniam aliud est mentiri, aliud verum occultare, si quidem aliud est falsum dicere, aliud verum tacere: si quis forte vel ad istam visibilem mortem non vult hominem prodere, paratus esse debet verum occultare, non falsum dicere, ut neque prodat neque mentiatur, ne occidat animam suam pro corpore alterius."* (Migne, *P. L.*, XXXVI, 85).—St. Jerome, *In Ezech.*, l. IV, c. 14: *"Non meretur audire veritatem, qui fraudulenter interrogat, sed suo corde capiendus est."* (*P. L.*, XXV, 118).—St. Bernard, *Serm. in Ct.*, XLII, no. 6: *"Plerumque non expedit innotescere omnibus omnia, quae nos scimus de nobis atque ipsa veritatis caritate et caritatis veritate vetamur palam fieri velle, quod noceat agnoscenti."* (Migne, *P. L.*, CLXXXIII, 900).

22 " 'What news, my Lord, from France?' some one asked of a cabinet minister. 'I don't know,' was the reply, 'I have not read the papers.' The story is Cardinal Newman's. Here the sense of the *I don't know* is restricted and reserved, internally in the mind of the speaker, and externally by the words added about the newspapers. It is a mental reservation of the broadest, such as no Pharisee could call a lie. Now suppose the reference to the papers omitted. It would still be very hard to call the *don't know* a lie. The reservation of official knowledge is still sufficiently apparent: no sensible man would expect that to be communicated by way of ordinary chitchat. Above all, when a topic has been forced upon one, and questions put that admit of no evasion, by an enquirer who has no right to ask, then surely any denial or disclaimer, however direct the form of words, must be qualified by the outward circumstances in which it is spoken. This qualification, unspoken, but not unsignified, will be, 'secrets apart.' " (Jos. Rickaby, S.J., *Political and Moral Essays*, pp. 222 sq.)

ing others, and when there is no obligation of keeping a secret, equivocation or mental reservation may not be employed.[23]

READINGS.—St. Alphonsus, *Theol. Mor.,* l. III, n. 970-971 (ed. Gaudé, II, 360); l. III, n. 151–171 (ed. Gaudé I, 467 sqq.).—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 438 sqq.—Aug. Lehmkuhl, S. J., *Casus Conscientiae,* Vol. I, 3rd ed., n. 972 sqq.—F. A. Göpfert, *Moraltheologie,* Vol. II, 7th ed., pp. 334 sqq.—Kössing, *Ueber die Wahrheitsliebe,* pp. 106 sqq.—V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 96 sqq. —P. Hötzel, *Jakob und Esau,* Munich 1881.—E. Recejac, *De Mendacio quid senserit Augustinus,* Paris 1897.—W. Protopopoff, *Biblische alttestamentliche Fakta nach Beleuchtungen der hl. Väter und Kirchenlehrer,* Kasan 1897.—J. Mausbach, *Catholic Moral Teaching and its Antagonists,* pp. 113 sqq.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 77 sqq.—Jos. Rickaby, S. J., "The Catholic Doctrine of Lying and Equivocation," in *Political and Moral Essays,* N. Y. 1902, pp. 215 sqq.—IDEM, *Moral Philosophy,* pp. 232–237.—J. E. Ross, C.S.P., *Christian Ethics,* pp. 264 sq., 140 sqq., N. Y. 1919.—J. H. Newman, *Apologia,* pp. 274 sqq., 349 sqq., 359 sqq.—J. Brodie-Brosnan, "Mental Restriction and Equivocation," in the *Irish Ecclesiastical Record,* Dec., 1920, No. 636, pp. 461–469.

23 Gury, *Comp. Theol. Mor.,* I. n. 457: *"Licet aliquando ex gravi causa uti restrictione late, id est, improprie mentali et verbis aequivocis, ex quibus sensus a loquente intentus intellegi facile possit. Ratio est, quia hoc non est malum in se, quum proximus non proprie decipiatur, sed ex iusta causa permittatur eius deceptio; aliunde ad bonum societatis requiritur, ut medium habeatur licite celandi secretum magni momenti; aliquando autem aliud medium non suppetit praeter aequivocationem aut restrictionem late seu improprie mentalem. Dixi, ex gravi causa, quia si usus talium restrictionum absque gravi et proportionata causa habeatur, nemo posset aut vellet alteri credere; hoc autem in maximum humanae societatis damnum cederet."* —Cfr. Kössing, *Ueber die Wahrheitsliebe,* pp. 112 sqq.

SECTION 7

THE DUTY AND VIRTUE OF FIDELITY

1. DEFINITION.—Closely related to veracity is fidelity. Veracity consists in speaking the truth or expressing one's mind without deceit; fidelity (*πίστις, fides, fidelitas*), in keeping a promise or in performing that to which one is obliged.[1]

Fidelity is a most important virtue both morally and socially. Without mutual confidence there could be no social intercourse and society would fall to pieces. He who can be always trusted and relied upon to do his duty, is not only highly respected among men, but, as Holy Scripture says, worthy of entering into the joys of Heaven.[2]

2. The duty of fidelity, which is based upon the same grounds as veracity, may originate:

a) In a promise, *i. e.*, a declaration of willingness to undertake a certain task or to live up to a

1 Cfr. Matth. XXIII, 23.

2 Prov. XXVIII, 20; Matth. XXV, 21.—Cfr. J. de Lugo, *De Iust. et Iure,* II, disp. 23, s. I, n. 13: *"Sicut veracitas inclinat ad conformanda verba externa cum mente, ita fidelitas inclinat ad conformanda facta cum dictis praeteritis; fidelitas obligat ad conformanda facta cum verbis significantibus promissionem."*—Horace, *Carm.,* I, 24, 6: *"Iustitiae soror, incorrupta fides nudaque veritas."*—*Ibid.,* III, 3, 1: *"Iustum et tenacem propositi virum non civium ardor prava iubentium,"* etc.

certain obligation.[3] A lawful and valid promise must be kept in the sense in which it was made by one and received by the other, that is, without equivocation or restriction, and it makes no difference whether he to whom it was given is an orthodox believer or a heretic (*fides haereticis habenda*).[4]

If a promise forms the foundation of a legal relation (*e. g.*, a contract, as in a betrothal) it constitutes a serious obligation, the non-fulfilment of which entails the duty of restitution.[5] The obli-

3 Gury, *Comp. Theol. Mor.*, I, n. 758: *"Promissio est contractus, quo quis libere et spontanee sese obligat ad aliquid gratuito praestandum vel omittendum in alterius favorem. Conditiones ad obligationem promissionis requisitae sunt:* (1) *Ut adsit voluntas se obligandi, saltem virtualis et implicita, quam censetur habere ille, qui serio vult promittere, etsi ad obligationem non animadvertat.* (2) *Ut consensus eiusdem promittentis plene sit liber et spontaneus ac proinde absit omnis error et dolus circa substantiam et causam finalem omnisque coactio vel metus iniustus.* 3. *Ut ipsa promissio sit exterius manifestata et acceptata; siquidem omne pactum debet constare mutuo consensu duorum vel plurium in idem obiectum, et aliunde nemo censetur velle sese erga aliquem obligare nisi iste acceptet."*

4 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 88, art. 3, ad 1: *"Secundum honestatem* [*i. e. in conscientia et coram Deo*] *ex qualibet promissione homo homini obligatur, et haec est obligatio iuris naturalis."*—St. Augustine, *De Doctr. Christ.*, l. IV, c. 18, n. 35: *"Quod minimum est, minimum est, sed in minimo fidelem esse, magnum est."* (Migne, *P. L.*, XXXIV, 105).—Idem, *Epist.*, 189 (*al.* 205), n. 6: *"Fides quando promittitur, etiam hosti servanda est, contra quem bellum geritur, quanto magis amico, pro quo pugnatur."* (*P. L.*, XXXIII, 856).

5 Cfr. Aug. Lehmkuhl, S.J., *Casus Conscientiae*, Vol. I, 3rd ed., n. 835: *"Promissio omnino gratuita per se obligat ex sola fidelitate neque sub gravi, sed sub veniali tantum, nisi speciales circumstantiae accedant."*—*Ibid.*, n. 837: *"Promissio potest ex iustitia obligare idque revera fit:* 1. *Si expresse obligatio iustitiae suscipitur;* 2. *Si tacite suscipitur, videlicet scienter permittendo periculum, ne promissarius ex non implenda promissione damnum subeat. In quo casu obligatio iustitiae est aut implere promissionem aut damnum extortum resarcire. Alioquin haberetur deceptio damnificativa."*

gation ceases when its fulfilment becomes morally impossible or injurious to the person to whom the promise was given (not so, however, if it would merely injure him who made it), or if the one to whom it was made lifts the obligation or fails to keep his part of the agreement, or, finally, if the promise has become useless or futile, or the circumstances of the case have so completely changed that if they had been foreseen, the promise would never have been made.[6]

The oft-quoted axiom, *"Haereticis fides non est servanda,"* says Dr. Linsenmann, could be justified only on the supposition of the medieval law that a heretic was an enemy of the public order and incapable of entering into legal relations with the faithful, in other words, that whoever espoused heresy knew that, as one denying an important truth of Christian Revelation, he would have no legal standing in the community and no right to expect fidelity from others. To-day, in civil society, we place the heretic on the same plane with the loyal Catholic, and therefore any promise made to him must be faithfully

6 Gury, *Comp. Theol. Mor.*, I, n. 760: *"Quaeritur, quandonam cesset vis promissionis acceptatae? Respondetur: 1. Si promissarius sponte condonet aut iuri suo cedat; 2. Si res promissa fiat illicita vel inutilis; 3. Si promissarius non stet suis promissis; 4. Si status rerum vel personarum ita mutetur, ut promissio non videatur illum eventum voluisse comprehendere; 5. Si aliquid promissum sit ob causam, quae non subest."*—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 110, art. 3, ad 5: *"Si [quis] non faciat, quod promisit, tunc videtur infideliter agere per hoc, quod animum mutat. Potest tamen excusari ex duobus: Uno modo, si promisit id, quod manifeste est illicitum, quia promittendo peccavit, mutando autem propositum bene facit; alio modo, si sunt mutatae conditiones personarum et negotiorum."*—Seneca, *De Benefic.*, l. IV, c. 35: *"Omnia esse debent eadem, quae fuerunt, quum promitteres, ut promittentis fidem teneas."*

kept. It would not be permissable to break one's word even to a robber or a murderer who had surrendered himself on the promise of immunity, provided, of course, no positive violation of the moral law were involved. A mere advantage to be gained for the commonwealth never justifies the breaking of a promise.[7]

b) The duty of fidelity may originate, secondly, in the confidential relation existing between members of the same social group. Every social relation freely entered into, whether of superiority or inferiority, as between husband and wife, master and servant, etc., entails the obligation of mutual fidelity, which in some instances is solemnly vowed, in others silently assumed. Fidelity is a mutually binding duty, which must be observed in the spirit and meaning of each relation. It is opposed, on the one hand, to compulsion and slavish servility and, on the other, to a mere desire for remuneration, and forms the one and only ethically effective bond of all relations resting on mutual confidence and of all contracts. Only he who is faithful to his vocation will live up to its duties and make the sacrifices demanded by it, even though they be unforeseen. The duty of fidelity has no limit except when it conflicts with the irreducible demands of the moral law.

Fidelity, says Linsenmann, does not demand slavish

7 Linsenmann, *Moraltheologie*, pp. 443 sq.

obedience, but presupposes a spiritual distinction. A servant will often be able to serve his master more faithfully by using his own judgment than by obeying orders literally. . . . Fidelity's closest ally is honor. Where fidelity is not esteemed, where conscientious compliance with duty is not gratefully acknowledged, where honest servants are not protected, where services rendered in confidential positions are rewarded with money only, there the spiritual bond which should connect master and servant is missing, and society is in danger of disruption.[8]

3. Opposed to fidelity is *infidelity* or *perfidy*. If the promise was confirmed by an oath, infidelity becomes *perjury*. The guilt of perfidy is gauged by the subjective malice and the importance of the matter involved, and it may, therefore, be either a venial or a mortal sin according to circumstances. Perfidy dishonors a man, places him in opposition to God, who, as St. Paul says, is faithful,[9] and destroys mutual confidence among men. The Apostle enumerates this sin among the vices on account of which God delivered the gentiles up to shameful affections.[10]

A particularly grievous sin of infidelity is that committed by a *soldier who deserts his flag*, especially when his conduct involves injury to the *bonum commune*, as it usually does in time of war. A deserter is bound to return to his allegiance, not only *ex titulo oboedientiae et*

8 Idem, *ibid.*, pp. 444 sq.
9 2 Tim. II, 13; 1 Cor. X, 13.
10 Rom. I, 31; I, 26. On *perjury*, see this *Handbook*, Vol. IV, pp. 256, 264 sqq.

iustitiae legalis, but also, if he took an oath to uphold the flag, *ex titulo fidelitatis et religionis,* unless the punishment he would have to undergo were entirely too severe.[11]

READINGS.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 80, art. 1, ad 3; qu. 88, art. 3.—Lessius, *De Iust. et Iure,* l. II, c. 47, n. 29 sqq.—Kössing, *Ueber die Wahrheitsliebe,* pp. 29 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 443 sqq.—Aug. Lehmkuhl, S.J., *Casus Conscientiæ,* Vol. I, 3rd ed., n. 835 sqq.—A. Vermeersch, S.J., *Quaestiones de Iustitia,* pp. 361 sq.

11 Schwane, *Die Gerechtigkeit,* p. 148.

CHAPTER III

DUTIES WITH REGARD TO THE IDEAL POSSESSIONS OF OTHERS

SECTION 1

THE DUTY OF RESPECTING THE HONOR AND GOOD NAME OF OTHERS

The good name of a man, that is to say, the high opinion which others have of him (*fama bona*), and the external honor which they pay him (*honor, æstimatio*), are important possessions both from the individual and the social point of view. On the one hand, they afford internal satisfaction and, on the other, they exercise a considerable influence upon the position and activity of a man by giving him authority and influence among his fellows. Thus the good name and honor of men constitute an ethical possession of great social importance, which must be duly respected for the same reasons which oblige the Christian to protect his personal reputation and honor. The duties towards one's fellowmen

with regard to good name and honor are twofold, positive and negative.[1]

1. *Positive Duties.*

a) Above all, man must give to his fellowman the honor that is his due, readily acknowledge his excellencies or merits, promote their acknowledgement by others, and defend him against unjust attacks. In doing so the human heart conquers the radical vice of envy, for "charity envieth not, . . . seeketh not her own, . . . rejoiceth not in iniquity, but rejoiceth with the truth." [2]

b) The duty of defending the honor of others against unjust attacks binds particularly towards those who have a special claim on a person, *e. g.*, parents, teachers, superiors, friends. Towards others than these it binds only when there is danger of serious injury, which might be wholly or in part prevented by a proper defence, but not when it is probable that any attempt at defence will prove ineffective or cause serious damage to the defender.

As regards the *manner* in which a man is bound to defend the honor of others, we may say that in

1 St. Bernard, *Epist.*, 122, n. 1: *"In hac vita quaedam merces virtutis est conspicuum et immortale testimonium. Hoc ipsa sibi comparat, hoc sibi ipsa custodit. Huius splendor non minuitur invidia, non exterioribus studiis adiuvatur. Quippe bonorum existimatio sicut falsis delationibus auferri non potest, ita nec adulatoriis favoribus acquiri."* (Migne, *P. L.*, CLXXXII, 267).—See this *Handbook*, Vol. III, pp. 164 sqq.

2 1 Cor. XIII, 4–6; cfr. Rom. XII, 10; XIII, 7; 1 Pet. II, 17; 1 Tim. VI, 1.—On *envy*, see this *Handbook*, Vol. II, pp. 55, 65, 77 sqq., 94.

most cases an expression of disapproval or dissatisfaction with the conduct of the offender, *e. g.*, by breaking off conversation with him, or leaving his company, or rendering exceptional honors to the person attacked, is apt to prove more effective than any attempt to defend him in a formal way.

The duty of honoring a fellowman ceases when he has forfeited his claim to respect by his own conduct.

c) Opposed to this duty are: *undue praise*, *flattery*, and *toadyism*. These vices are mean and destructive because they are designed to create false notions of dignity, authority, and power, and in matter of fact but too often succeed in this nefarious attempt.[3] True *politeness* (*urbanitas*), which, without trenching upon modesty, gives honor to whom honor is due and, above all, never violates the truth, is a moral virtue, whereas intentional *rudeness* may be called a moral defect, because Sacred Scripture exhorts us: "Let every one of you please his neighbor unto good, to edification." [4]

3 Cfr. Horace, *Sat.*, I, 6, 15 sqq.: "*[Populus], qui stultus honores saepe dat indignis et famae servit ineptus, qui stupet in titulis et imaginibus.*"—Tacitus, *Annal.*, l. I, c. 7: "*Romae ruere in servitium consules, patres, equites.*"—Seneca, *De Benefic.*, l. VI, c. 30: "*Non vides, quemadmodum illos in praeceps agat extincta libertas et fides in obsequium servile submissa, dum nemo ex animi sui sententia suadet dissuadetque, sed adulandi certamen est et unum amicorum omnium officium, una contentio, quis blandissime fallat?*"—Cfr. Cicero, *Laelius sive de Amicitia*, c. 25.

4 Rom. XV, 2; cfr. Phil. IV, 5.—On politeness, see this *Handbook*, Vol. III, p. 70.—St. Augus-

In everyday life politeness is often made to serve as a cloak for flattery and hypocrisy, and *conventional courtesy* is largely unreal. The consequence is that many unspoiled natures rebel against the hollowness of civilization. This rebellion is justified when it is directed against really immoral excrescences and so long as it does not go to the extreme of opposing boorishness to conventionality. It is always a gain if nature, which is selfish in its crudeness, is subdued to the yoke of good manners, even though they be but conventional. *"Suaviter in modo"* is a necessary complement to *"fortiter in re."* [5]

We can easily understand, says a recent writer, why biassed men, who see nothing but the abuse involved, protest against every form of superior culture and wish to substitute for politeness the frank, unveiled expression of personal opinion. These contemners of the finer forms of social intercourse forget that true charity and veneration must not be displaced by hypocrisy and that, on the other hand, even those who have no claim to respect, may and should be treated with charity. True charity, like the sun, shines upon good and bad alike and sheds its blessings upon the wicked as well as the just. It is patient and kind, not easily provoked to anger, thinketh no evil, but beareth all things and endureth all things.[6] Charity does not inquire after merit and value, but lends value to that which it loves. It eschews hypocrisy and

tine, *De Civ. Dei*, l. XXII, c. 30, n. 1: *"Vera ibi gloria erit, ubi laudantis nec errore quisquam nec adulatione laudabitur. Verus honor, qui nulli negabitur digno, nulli defertur indigno, sed nec ad eum ambiet ullus indignus, ubi nullus permittetur esse nisi dignus."* (Migne, *P. L.*, XLI, 801).—Idem, *Epist.* CCXXXI (*al.* CCLXIV), n. 4: *"Quum laudantur boni, non laudantis, sed laudantibus prodest. Nam illis, quantum ad ipsos attinet, quod boni sunt sufficit, sed eis, quibus expedit imitari bonos, gratulandum est, quum ab eis laudantur boni, quoniam sic indicant eos sibi placere, quos veraciter laudant."* (*P. L.*, XXXIII, 1024).

5 Linsenmann, *Moraltheologie*, p. 456.

6 Cfr. 1 Cor. XIII, 4 sqq.

flattery and treats all men with benevolence and good will.

We do not, of course, mean to intimate that there are not cases in which regard for higher interests may compel us to express our innermost convictions openly and without reserve. Regard for the feelings of others must never be permitted to inspire a lie. Flattery is incompatible with truth and with charity. It dishonors him from whom it comes as well as him by whom it is accepted. We really show contempt for our neighbor when we flatter him.[7]

2. Negative Duties.

For the negative duties which we have in regard to the honor and good name of our fellowmen see the next section of this treatise.

READINGS.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 73.—F. X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 453 sqq.—H. Noldin, S. J., *Summa Theol. Mor.*, Vol. II, pp. 658 sq.—A. Tanquerey, S. S., *Synopsis Theol. Mor. et Pastor.*, Vol. III, pp. 17 sq.—M. Cronin, *The Science of Ethics*, Vol. II, pp. 110 sqq.

7 Rottmanner, O. S. B., *Predigten und Ansprachen*, Vol. II, 2nd ed., pp. 178 sqq.—Cfr. St. Jerome, *Epist.*, 148 (*al.* 14), n. 17: "*Adulatorum quoque assentationes et noxia blandimenta fallaciae velut quasdam pestes animae fuge. Nihil est, quod tam facile corrumpat mentes hominum, nihil quod tam dulci et molli vulnere animum feriat. In multis, isto maxime tempore, regnat hoc vitium quodque est gravissimum, humilitatis ac benevolentiae loco ducitur. Eo fit, ut qui adulari nescit, aut invidus aut superbus putetur. Est sane grande et sublime artificium, laudare alterum in commendationem sui et decipiendo animum sibi obligare decepti: quodque hoc maxime vitio agi solet, fictas laudes certo pretio vendere. Quae haec tanta est levitas animi, quae tanta vanitas relicta propria conscientia, alienam opinionem sequi et quidem fictam atque simulatam? Rapi vento falsae laudationis (adulationis), gaudere ad circumventionem suam et illusionem pro beneficio accipere? Tu ergo, si vere laudabilis esse cupis, laudem hominum ne requiras.*" (Migne, *P. L.*, XXII, 1212).

SECTION 2

SINS AGAINST THE HONOR AND GOOD NAME OF OTHERS

The sins against the honor we owe our fellowmen are partly *internal* and partly *external.* They differ in degree according to the nature of the attack and the relation existing between the offender and the offended.

The legal axiom that every man must be considered honorable until the contrary has been proved, embodies a truly Christian principle, for the essence of Christianity is charity, which "thinketh no evil." [1] Whoever disregards this maxim, has either lost charity, or is about to lose it. Merely to entertain unfounded suspicion internally is an injustice to others and an act of infidelity to God.[2]

1 1 Cor. XIII, 5.

2 Matth. VII, 1; Luke VI, 37; John VII, 24; 1 Cor. IV, 5; Jas. IV, 13.—St. Thomas, *Summa Theologica,* 2a 2ae, qu. 60, art. 4: *"Ex hoc ipso, quod aliquis habet malam opinionem de alio absque sufficienti causa, iniuriatur ei et contemnit ipsum. Nullus autem debet alium contemnere vel nocumentum quodcumque inferre absque causa cogente. Et ideo ubi non apparent manifesta indicia de malitia alicuius, debemus eum ut bonum habere in meliorem partem interpretando, quod dubium est."*—*Ibid.,* ad 2: *"Aliud est iudicare de rebus et aliud de hominibus. In iudicio enim, in quo de rebus iudicamus, . . . unusquisque debet niti ad hoc, quod de rebus iudicet, secundum quod sunt. Sed in iu-*

1. The *internal* acts by which we violate the duty of honoring our neighbor, in so far as they influence our conduct towards him and thus cause him injury, are: groundless suspicion and rash judgment.

a) We are guilty of *groundless suspicion* against our fellowman if we doubt his virtue for altogether insufficient reasons (*levia indicia*). This sin usually begins with an unfounded doubt (*dubitatio temeraria*), which, if it is not promptly suppressed, engenders rash suspicion (*suspicio temeraria*).[3]

Unfounded suspicion of others usually comes from corruption in one's own heart. If we were better men ourselves, says a modern writer, we should not consider others capable of so much evil. "He who is himself wicked," says St. Ignatius of Loyola, "easily suspects others, just as he who suffers from vertigo, imagines that everything about him is moving round and round."

b) *Rash judgment* (*iudicium temerarium*) consists in

dicio, quo iudicamus de hominibus, . . . ad hoc potius tendere debemus, quod hominem iudicemus bonum, nisi manifesta ratio in contrarium apparet."—Hence the moral and legal axiom: *"Nemo praesumitur malus, nisi probetur."*

3 St. Thomas, *Summa Theologica*, 2a 2ae, qu. 60, art. 3: *"Est triplex gradus suspicionis. Primus quidem gradus est, ut homo ex levibus indiciis de bonitate alicuius dubitare incipiat, et hoc est veniale et leve peccatum, pertinet enim ad tentatitonem humanam, sine qua vita ista non ducitur. Secundus gradus est, quum aliquis pro certo malitiam alterius aestimat ex levibus indiciis; et hoc, si sit de aliquo gravi, est peccatum mortale, inquantum non est sine contemptu proximi. Tertius gradus est, quum aliquis iudex ex suspicione procedit ad aliquem condemnandum; et hoc directe ad iniustitiam pertinet, unde est peccatum mortale."* —St. Augustine, *Tract. in Ioa.*, 26, n. 2: *"Noli velle iudicare, si non vis errare."* (Migne, *P. L.*, XXXV, 1607).

thinking ill of others without sufficient warrant. It differs from groundless suspicion only in degree: the former implies hesitation, whereas the latter does not.[4] Holy Scripture tells us, and experience confirms it, that unfounded suspicion and rash judgment both originate as a rule either in malice, which sees nothing but wickedness in others, or in envy or hatred, which inspire ill will towards others. In some men these vices result from the bitter disappointments of a life-time. When they spring from malice, envy, or hatred, unfounded suspicion and rash judgment are invariably sinful, because they involve a lack of charity. The gravity of this sin may be gauged by the importance of its object and the degree of pleasure which the sinner takes in his uncharitable act.

Merely to harbor a momentary and spontaneous (or involuntary) doubt regarding the virtue of another is, of course, no sin at all. Such judgments frequently flash through the mind—we are so quick and prone to judge ill of others without sufficient reason. All this is merely a temptation. But from the temptation we pass on to sin if, *knowing the insufficiency of our reasons,* we nevertheless *deliberately* form an unfavorable judgment regarding another's virtue. "Suspicion," says the Angelic Doctor, "denotes evil thinking based on slight indications, and this may arise from three causes. First, from a man's being evil in himself, and from this very fact, as though conscious of his own wickedness, a wicked man is prone to think evil of others. . . . Secondly, it is owing to a man's being ill-disposed towards another; for

4 Gury, *Comp. Theol. Mor.,* I, n. 481: "1. *Iudicium temerarium: est verus assensus ex levibus indiciis conceptus de aliquo peccato vel defectu proximi; 2. Suspicio temeraria est infirmus assensus de malo proximi seu assensus de labe alterius cum formidine de opposito conceptus; 3. Dubitatio est suspensio animi in neutram partem se determinantis.*"

when a man hates or despises another, or is angry with or envious of him, he is led by slight indications to think evil of him, because everyone easily believes what he desires. Thirdly, it may arise from long experience, wherefore the Philosopher says (*Rhet.* ii) that old people are very suspicious, for they have often experienced the faults of others. The first two causes of suspicion evidently connote perversity of the affections, whilst the third diminishes the nature of suspicion, in as much as experience leads to certainty, which is contrary to the nature of suspicion. Consequently, suspicion denotes a certain amount of vice, and the further it goes, the more vicious it is." [5]

To entertain a sort of general *distrust* towards strangers or to reserve one's judgment regarding their honesty or disinterestedness, in consequence of having had one's goodness repeatedly imposed

5 St. Thomas, *Summa Theologica*, 2a 2ae, qu. 60, art. 3: *"Suspicio importat opinionem mali quando ex levibus indiciis procedit, et hoc contingit ex tribus: uno quidem modo ex hoc, quod aliquis in seipso malus est et ex hoc ipso quasi conscius suae malitiae faciliter de aliis malum opinatur. Alio modo provenit ex hoc, quod aliquis male afficitur ad alterum; quum enim aliquis contemnit vel odit aliquem aut irascitur vel invidet ei, ex levibus signis opinatur mala de ipso, quia unusquisque faciliter credit, quod appetit. Tertio modo provenit ex longa experientia. Primae duae suspicionis causae manifeste pertinent ad perversitatem affectus, tertia vero causa diminuit rationem suspicionis, in quantum experientia ad certitudinem proficit, quae est contra rationem suspicionis. Et ideo suspicio vitium quoddam importat, et quanto magis procedit suspicio, tanto magis est vitiosum." Vide supra*, n. 3)—Gury, *Comp. Theol. Moral.*, I, n. 482: *"Iudicium temerarium de culpa proximi est peccatum mortale ex genere suo contra iustitiam; quisque enim ius habet ad bonam sui existimationem apud singulos. . . . Saepe autem veniale est ob parvitatem materiae aut imperfectionem actus. Suspicio temeraria et dubitatio de labe proximi sunt venialia tantum ex genere suo. Ratio est, quia ob debilem et facile mobilem adhaesionem ordinarie leve tantum damnum proximo afferunt, quum famam non tollant, set tantum minuant et dubiam reddant."*

upon, is no sin, because there is some reason for such a general distrust. Still, we must always remember that Christian charity commands us to think good rather than evil of our neighbor.[6] The Talmud lays down a prudent rule of conduct when it says: "Judge no one unless you have been in his place."

"Frequently there is a greater sin involved in judging rashly of another than in the act that is so judged. The wise men of the world (*sapientes mundi*) warn us not to outdo the sins of others by passing rash judgment upon them; how much more carefully ought we to consider our own conduct, lest we condemn petty faults in others and at the same time incur grievous sins ourselves." [7]

"To have a low opinion of oneself and always to think well and commendably of others," says Thomas à Kempis, "is great wisdom and perfection. If thou shouldst see another openly sin, or commit heinous crimes, yet thou oughtest not to esteem thyself better, because thou knowest not how long thou mayest remain in a good state. We are all frail; but do thou think no one more frail than thyself." [8]

2. The chief external sins against the honor of our fellowman are contumely, calumny, and slander.

6 Cfr. Is. XI, 3; Luke VI, 37; John VIII, 15 sq.; 1 Cor. IV, 5.—St. Augustine *De Agone Christ.*, c. 27, n. 29: *"Illo loco* [*Mt. vii, 1*], *ubi* [*Dominus*] *vetat iudicare, illud admonet, ne damnemus aliquem, cuius vel cogitatio nobis non est aperta vel nescimus, qualis postea sit futurus."* (Migne, *P. L.*, XL, 395).

7 Pseudo-Ambrose, *Apol.*. II David, c. 2, n. 5 (Migne, *P. L.*, XIV, 889).

8 *De Imitatione Christi*, l. I, c. 2 (ed. Pohl, II, 8).

a) *Contumely* (*contumelia*) means casting a man's faults in his face to detract from his dignity. This may be done either in his physical or in his moral presence. Moral presence is assumed when the insult is uttered before those who know the victim and to whose respect he attaches weight.[9] This includes publication in the press. Contumely implies insult. An *insult* is any remark or expression by which another is denied the dignity of a human being, or accused of a moral defect, or charged with a crime or an offense. It is not necessary that the utterance in question actually contain an expression of contempt or disrespect, but the intention of injuring the other (*animus iniuriandi*) suffices.

The seriousness of the sin of contumely is measured by the intention of the offender, the importance of the matter involved, and the dignity of the person injured. No contumely is committed by parents and superiors when they censure the sins and faults of their children or subjects, even if this is done in a humiliating way, though they should, of course, always remember that even just reproaches must be kept within proper limits and that brutality and unnecessary harshness often produce a contrary effect.

9 Gury, *Comp. Theol. Mor.*, I, n. 478: *"Praesens aliquis esse potest vel personaliter seu physice vel moraliter per imaginem aut per quid aliud, in quo aliquatenus repraesentetur."*

The ancients took cognizance of real contumely, but not of verbal, and the Roman law did not punish the latter, probably for the reason that in former times men were less sensitive in regard to verbal insults than they are now, but especially because the spoken word did not then enjoy the publicity now given to it through the press.[10] St. John the Baptist and Jesus Christ Himself severely censured the Scribes, Pharisees, and Sadducees.[11] St. Polycarp, when asked by the heretic Marcion whether he knew him, answered: "Certainly I know the first-born of Satan!" [12]

Contumely, says Fr. Slater,[13] is of itself a grave sin against justice and charity, for it injures a man in what he values more than wealth, and as a rule an insult wounds the reputation as well as the feelings of him who is insulted. Christ shows how grievous a sin is committed by contumely when He says: "Whosoever shall say to his brother, Raca, shall be in danger of the council. And whosoever shall say, Thou fool, shall be in danger of hell fire." [14] Like most sins against justice and charity, contumely may be a

10 Homer (*Ilias*, I, 210 sqq.) describes Athene as intervening between Achilles and Agamemnon with the words: "Do not engage in combat nor draw the sword, for you can insult him in words as much as you please."—Linsenmann, *Moraltheol.*, p. 457; W. S. Lilly, *On Right and Wrong*, London, 1892, Ch. VII, "The Ethics of Journalism," pp. 150–173.

11 Matth. III, 7; XII, 34, 39; XVI, 4; XXIII, 13–33; Mark VIII, 38; Luke III, 7; XI, 42–45; cfr. Matth. XV, 26; XVI, 23; Mark VII, 27; Luke XIII, 32; Acts XIII, 10; XXIII, 3; Gal. III, 1, 3; Phil. III, 2; Tit. I, 12 sq.

12 Irenaeus, *Adv. Haer.*, III, 3–4; cfr. Polycarp, *Epist. ad Philipp.*, c. 7; Funk, *Patres Apost.*, Vol. I, 2nd ed., p. 304; Kirsopp Lake, *The Apostolic Fathers* (Loeb Classical Library), Vol. I, p. 293.

13 Slater, *Mor. Theol.*, I, 462.

14 Matth. V, 22.

venial sin only, if the matter involved is slight. *Chaff* or *banter,* which is not intended to wound or irritate others is, of course, harmless, so long as it keeps within due bounds.[15]

We insult a neighbor not only in words, but also by sending him *abusive, immoral, or frivolous cards,* a custom which exists in some countries and constitutes a serious abuse of the practice, in itself unobjectionable, of sending tokens of congratulation or remembrance at certain seasons of the year. The exhibition and circulation of offensive cards seriously menaces the morals of the young and promotes the world-wide movement against sound ethics.

b) *Calumny* (*calumnia*) or *slander* is committed by falsely imputing to another something which injures or destroys his reputation. This usually consists in accusing him falsely or exaggerating his faults or denying his good qualities or wilfully minsinterpreting his intentions,[16] and may be done in speech or in writing; in the latter case is called *libel* or *pasquil.*

Calumny involves three distinct acts; namely, first, a wilful lie, which is aggravated by the fact that it is told in secret and the injured person cannot defend himself against it; secondly, a sin against charity, and thirdly, a violation of justice

15 Slater, *ibid.*

16 Deut. I, 27; Mark VII, 22. On Matth. XII, 36 *ῥῆμα ἀργόν, verbum otiosum,* cfr. E. Nestle, *Philologica Sacra,* Berlin, 1896, pp. 58 sq.

(*iustitia commutativa*), because the injured person frequently suffers damage in his social position or good name.

If calumny is committed in general terms, *i. e.*, if we declare our neighbor to be entirely bad without a redeeming trait, it is a mortal sin. If we impute to him only one fault, or several faults, the gravity of the sin committed varies according to the seriousness of the faults imputed, the consequences of the imputation, and the malice with which the calumniator strives to effect the moral or social ruin of his victim. The lighter the unjust accusation and the less intentional the imputation of evil, the smaller will be the guilt incurred.

In its worst form calumny is little less than *spiritual murder* and must be reckoned among the sins that cry to Heaven for vengeance.[17]

17 Cfr. Ps. C, 5; Jas. IV 11; 1 Pet. II, 1.—St. Jerome, *Epist.* 54 (*al.* 10), n. 13: *"Fieri non potest, ut absque morsu hominum vitae huius curricula quis pertranscat, malorumque solatium est, bonos carpere, dum peccantium multitudine putant culpam minui peccatorum. Sed tamen cito ignis stipulae conquiescit et exundans flamma deficientibus nutrimentis paulatim emoritur."*—*Epist.*, 108 (*al.* 27), n. 19: *"Lingua maledica sanctos carpere solita est in solatium delinquendi."*—*Epist.*, 148 (*al.* 14), n. 16: *"Nulli unquam omnino detrahas nec aliorum vituperatione te laudabilem videri velis magisque vitam tuam ornare disce quam alienam carpere. Pauci admodum sunt, qui huic vitio renuntient, raroque invenies qui ita vitam suam irreprehensibilem exhibere velint, ut non libenter reprehendant alienam. Tantaque huius mali libido mentes hominum invasit, ut etiam qui procul ab aliis vitiis recesserunt, in istud tamen quasi in extremum diaboli laqueum incidant. Tu vero hoc malum ita effuge, ut non modo ipsa non detrahas, sed ne alii quidem detrahenti aliquando credas. Nec obtrectatoribus auctoritatem de consensu tribuas, ne eorum vitium nutrias annuendo. . . . Est sane tale hoc vitium, quod vel in primis extingui de-*

The varieties of this sin are described in the old memorial verse:

"Imponens, augens, manifestans, in mala vertens,
Qui negat aut minuit, reticet laudatque remisse."

If one is calumniated, he should recall that it is not the worst fruit that is attacked by the wasps, as the German poet Bürger says, or, as an Arabian proverb puts it: "People do not throw stones at a tree unless it bears fruit."

Some men resemble bees, not by their diligence, but by their sting.

c) *Detraction* or *backbiting* (*diffamatio, detractio*) [18] is committed when one unjustly deprives another of his good name by revealing his real but secret faults in his absence. This is a sin

beat, et ab eis, qui se sancte instituere volunt, prorsus excludi. Nihil enim tam inquietat animum, nihil est quod ita mobilem mentem ac levem faciat, quam facile totum credere et obtrectatorum verba temerario mentis assensu sequi. Hinc enim crebrae dissensiones, hinc odia iniusta nascuntur. Hoc est quod saepe de amicissimis etiam inimicos facit, dum concordes quidem, sed credulas animas maliloqua lingua dissociat. At contra, magna quies animi magnaque est morum gravitas, non temere de quoquam sinistri aliquid audire. Beatusque est qui ita se contra hoc vitium armavit, ut apud eum detrahere nemo audeat. Quodsi haec in nobis esset diligentia, ne passim obtrectatoribus crederemus, iam omnes detrahere timerent, ne non tam alios quam seipsos viles detrahendo facerent. Sed hoc ideo malum celebre est, idcirco in multis fervet hoc vitium, quia paene ab omnibus libenter auditur." (Migne, *P. L.*, XXII, 557, 896, 1211).

18 The older Scholastics designated both calumny and detraction with one word: *detractio*.—Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 73, art. 1.—Gury, *Comp. Theol. Mor.*, I, n. 459, says: *"Detractio est occulta et iniusta violatio famae alienae seu denigratio iniusta famae proximi absentis. Fama autem est bona aestimatio, quam alii habent de vita et moribus alicuius. Dectractio dicitur simpliciter talis, si fama proximi violetur relatione criminis veri; denominatur calumnia, si violatio sequatur ex impositione criminis falsi."*

against justice as well as charity, because every man has a strict right to his good name. The more uncharitable the disposition of the detractor or slanderer, the more unfavorable the light in which he places his neighbor, the more widely the detraction circulates, the more the victim's position or activity depends on his good name, and the worse the results of the detraction, the more serious is the sin committed. Another factor to be taken into consideration here, as in all sins of defamation, are the consequences resulting from detraction in the case of those who hear of it. Unsophisticated persons are apt to lose their good opinion of others generally (*odium generis humani*) and their reverence for virtue. Hence a sin of this kind, aside from the malice it involves, is more grievous when committed by persons in whose veracity and judgment one has great confidence.[19]

Like calumny, detraction can be committed against an entire community or class, and not only by word of mouth, but also in writing. To defame others in writing is a more grievous

19 Gury, *Comp. Theol. Mor.*, I, n. 460: "*Gravitas detractionis desumenda est praecipue ex damni gravitate, quod proximum ex eo praevidetur esse passurum, et non praecise ex gravitate defectus seu criminis quod de proximo narratur. Hinc ad cognoscendam in casu particulari detractionis gravitatem attendendum est ad qualitatem: 1. Personae detrahentis, an sit gravis et discreta aut garrula et levis; 2. Personae laesae, an sit bonae vel malae famae etc. Ratio est, quia maior vel minor fides praestabitur, prout loquens erit maiori vel minori fide dignus; item maius vel minus sequetur famae detrimentum pro ratione maioris vel minoris aestimationis qua persona laesa gaudebit.*"

sin than to do so by word of mouth. Writings enjoy a certain permanency and therefore are able to exercise their influence not merely in the present, but likewise in the future.[20]

Mendacity and detraction are the primary vices of the modern newspaper press. "Journalism is conducted under conditions which tend to nourish this vice. The newspaper is, by its very nature, an ephemeral production, read for an hour and then cast aside, and probably never looked at again. Its assertions have done their work before an opportunity of correcting them is presented. Besides, it rests with editors whether contradictions of false and misleading allegations, which their journals may contain, shall appear in them or not. And it is manifest to all men that the considerations by which this question is determined are, in a vast majority of instances, wholly unethical. Again, the conditions under which the newspaper publicist works are extremely unfavorable to the cultivation of the virtue of veracity. He is called upon suddenly to expound views which shall strike his readers as profound, well-considered, or original, about subjects of which, very likely, he knows nothing truly or exactly. Or he is summoned to essay the defense of 'principles' to which he is wholly indifferent. Or he is bidden to attack some institution, some interest, some work, which whatever there may be of good left to him confesses to be worthy of respect and support. A very few years' practice in a calling of this kind is apt to render him as indifferent to the goal whither his pen conducts him, as is a cab-horse to the destination whither the driver's

20 Cfr. St. Paul's judgment of the Cretans (Tit. I, 12), and the sayings: *"Litera scripta manet"* and *"Literae non erubescunt"; i. e.,* one writes more boldly than one speaks.

'fare' is conveyed. And the worst of it is that, in time, he comes to glory in his shame. Aristotle, in the Nicomachean Ethics, distinguishes between two kinds of liars; there is 'the liar who loves a lie for its own sake,' and 'the liar who lies to win reputation or to make money.' But many a journalist who, at first, belongs to the latter of these classes, and is perhaps a little ashamed, for a while, at finding himself there, passes pretty swiftly into the former. Thus does he anticipate in this life, the doom which Dante ascribed to the damned; he is in the miserable estate of those *'genti dolorose'* who have lost *'il ben del intelletto.'* And then, by a fatal and necessary law, his chief object, next to the provision of the means of 'agreeable feeling' for himself, is to bring down as many as possible to his own level. Nor does he find any surer way of effecting this, than by the persistent denial of those moral excellences which he has ceased to strive after, or even to venerate. Is a man the object of reverence and admiration, for patriotism, philanthropy, piety? Your newspaper censors, with due protestations of hatred of hypocrisy, will strip off the veneer which imposes on the unsuspicious; will show their readers that these pretended virtues are a mere cloak for some base or sordid end; will demonstrate conclusively that 'old Cato is as great a rogue as you.' And their efforts are only too successful. I think I may truly say that the newspaper press, during the last quarter of a century, has done more than anything else to de-ethicize public life; to lay the axe to the root of duty, self-devotion, self-sacrifice, the elements of the moral greatness of a nation, which is its true greatness." [21]

Formal detraction differs from *material* in that it is intentional. Formal detraction, or, *a fortiori*, slander, be-

21 W. S. Lilly, *On Right and Wrong*, pp. 171 sqq.

ing contrary to justice and charity, which bind under a grave obligation, is of itself a grievous sin, though frequently only venial on account of the smallness of the matter involved. Material detraction usually proceeds from carelessness, lack of caution, love of gossip, or a desire to be entertaining and, therefore, as a rule, is a venial sin only, unless indeed it seriously injures the good name of others.[22]

Note that the guilt of detraction, aside from the underlying intention, is measured by the amount of injury done (*gravitas damni*), and that, consequently, attacks upon the good name of others are grievously sinful in proportion to the dignity or social position of the persons attacked. To attack the good name of a priest or superior, therefore, is more grievous than to attack the reputation of an ordinary citizen.

While it is never permissible falsely to impute a crime to another,[23] it may be licit, nay a strict duty, to reveal his

22 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 73, art. 2: "*Peccata verborum maxime sunt ex intentione dicentis iudicanda. Detractio autem secundum suam rationem ordinatur ad denigrandam famam alicuius. Unde ille per se loquendo detrahit, qui ad hoc de aliquo obloquitur eo absente, ut eius famam denigret. Auferre autem alicui famam valde grave est, quia inter res temporales videtur fama esse pretiosior, per cuius defectum impeditur homo a multis bene agendis* (Eccli. 41, 15). *Et ideo detractio per se loquendo est peccatum mortale. Contingit tamen quandoque, quod aliquis dicit aliqua verba, per quae diminuitur fama alicuius, non hoc intendens, sed aliquid aliud. Hoc autem non est detrahere per se et formaliter loquendo, sed solum materialiter et quasi per accidens. Et si quidem verba, per quae fama alterius diminuitur, proferat aliquis propter aliquod bonum necessarium debitis circumstantiis observatis, non est peccatum nec potest dici detractio. Si autem proferat ex animi levitate vel propter causam aliquam non necessariam, non est peccatum mortale, nisi forte verbum quod dicitur sit adeo grave, quod notabiliter famam alicuius laedat et praecipue in his quae pertinent ad honestatem vitae, quia hoc ex ipso genere verborum habet rationem peccati mortalis.*"

23 *Prop. damn. sub Innoc. XI*, n. 44: "*Probabile est, non peccare mortaliter, qui imponit falsum crimen alicui, ut suam iustitiam et honorem defendat. Et si hoc non sit probabile, vix ulla erit opinio probabilis in theologia.*" (Denzinger-Bannwart, n. 1194).

true faults for a higher purpose. This is the case, for instance, when it becomes necessary to inform legitimate superiors, to warn inferiors, children, etc., or to protect oneself or others against serious injury, or if the faults revealed are already known in consequence of a public trial or the culprit's own admission (*notorietate iuris*) through the confession of confederates (*notorietate facti*) or through rumor (*notorietate famae*). Whenever the revelation of the sins or faults of another seems necessary as a means of reforming him or of averting a greater evil, it is morally licit, nay a duty, for the reason that the sinner has lost the right to his good name because he can not preserve it except to the detriment of others and to his own injury.[24] But even though his faults and crimes are notorious, charity commands us not to reveal them to persons to whom they would otherwise probably remain unknown. Besides rumors must never be represented as facts.

24 Gury, *Comp. Theol. Mor.*, I, n. 461: *"Nunquam licet falsum crimen alteri imponere. . . . Licet autem iusta de causa crimen occultum etiam cum eius famae iactura manifestare, quia aliquando bonum publicum vel privatum hoc requirit et tunc cessat ius proximi ad famam conservandam. Causae autem ex quibus licite crimen alterius revelari potest, sunt sequentes: 1. Utilitas notabilis revelantis ipsius, v. g. ad consilium vel auxilium in re gravi petendum, secluso tamen quocunque affectu ad detractionem; 2. Utilitas delinquentis, nempe ad ipsius instructionem vel correctionem etc.; 3. Utilitas publica, uti ad impedienda mala reipublicae vel religioni aut alicui communitati imminentia; 4. Utilitas gravis etiam privata sive audientium sive aliorum, v. g. ut a malis, damnis aut incommodis sibi alias certe aut probabiliter eventuris caveant. Ratio horum est, quia tunc manifestans peccatum alterius non laedit iustitiam nec caritatem. 1. Non laedit iustitiam, quia proximus non habet ius ita strictum ad suam famam, ut obligentur alii ad tegendam veritatem, quando eius manifestatio necessaria est ad grave damnum sive proprium sive aliorum vitandum. 2. Non laedit caritatem, quia caritas non obligat cum tanto detrimento. Si enim non teneris impedire damnum proximi tui, etsi maius, cum gravi tuo damno, ita nec teneris eo casu occultum crimen proximi celare."* Cfr. *ibid.*, n. 465–466.

Detraction comprises all evil speaking and criticizing of others through the spreading of tales to the disadvantage of their good name. This applies especially to suspicions cast upon the internal motives of our fellowmen.

A special kind of detraction is known as *tale-bearing* (*susurratio*), and consists in mischief-making between friends by telling tales to the disadvantage of one of them, with the object of sowing or promoting discord.[25] This sin is particularly detestable if it is directed to the destruction of mutual confidence between husband and wife.

By listening wilfully or with pleasure to a detractor, or encouraging him by asking questions or applauding his tales, or not hindering them if we are able, we formally coöperate in his sin.[26]

Mockery or *derision* (*derisio, irrisio, illusio, subsannatio*) makes sport of another's honor. It sometimes runs counter to charity also by

25 Prov. VI, 16 sqq.; XXVI, 20, 22; Ecclus. V, 16 sq.; XXVIII, 15.—Cfr. St. Thomas, *Summa Theologica*, 2a 2ae, qu. 74, art. 2: "*Peccatum in proximum tanto est gravius, quanto per ipsum maius nocumentum proximo infertur. Nocumentum autem tanto maius est, quanto maius est bonum, quod tollitur. In cetero vero extraordinaria bona praeeminet amicus* (*Eccli.* vi, 15). *Fama autem ipsa, quae per detractionem tollitur, ad hoc maxime necessaria est, ut homo idoneus ad amicitiam habeatur. Et ideo susurratio est maius peccatum quam detractio et etiam quam contumelia, quia amicus est melior quam honor et amari quam honorari.*"

26 Prov. XXV, 23.—Cfr. St. Bernard, *De Consid.*, l. II, c. 13: "*Detrahere aut detrahentem audire, quid horum damnabilius sit, non facile dixerim.*" (Migne, *P. L.*, CLXXXII, 756).

employing the faults or infirmities of others in order to make them a butt of laughter or contempt. The most grievous sin of this kind is the mockery of God and sacred things; next in order come mockery of parents, superiors, and virtuous persons.[27]

READINGS.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 60, art. 3–4; qu. 73 (Rickaby, *Aquinas Ethicus*, II, 18 sqq., 82 sqq.).—St. Alphonsus, *Theol. Mor.*, l. III, n. 962-977 (ed. Gaudé, II, 355 sqq.).—Jocham, *Moraltheologie*, Vol. III, pp. 400 sqq.—Schwane, *Die Gerechtigkeit*, pp. 77 sqq.—M. Cronin, *The Science of Ethics*, Vol. II, pp. 110 sqq.—A. Tanquerey, *Synopsis Theol. Mor. et Pastor.*, Vol. III, pp. 156 sqq.—J. E. Ross, *Christian Ethics*, pp. 259 sqq.—H. Noldin, S.J., *Summa Theol. Mor.*, Vol. II, pp. 659 sqq., 678 sq.

27 Is. XXXVII, 23; Prov. XXX, 17; Job XII, 4.—Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 75, art. 2.—Possidius, *Vita Sti. Augustini*, c. 22 (Migne, *P. L.*, XXXII, 52): *"Quisquis amat dictis absentum rodere vitam hanc mensam indignam noverit esse sibi."*

SECTION 3

THE DUTY OF RESTITUTION ARISING FROM CALUMNY AND DETRACTION

Detraction, calumny, and other like sins violate justice, and therefore involve the duty of making restitution, as far as possible, for the damage inflicted, and of seeking reconciliation with the person injured.

1. An *insult* or contumely wilfully committed against a fellowman calls for an apology (*deprecatio*). However, a *formal* apology is, as a rule, demanded only of subjects; among equals an act of extraordinary benevolence will serve the same purpose; on the part of superiors in their relation to inferiors, a special sign of good will or amiability will suffice.[1]

1 St. Alphonsus, *Theol. Mor.*, l. III, n. 986–987 (ed. Gaudé, II, 373).—St. Augustine, *Epist.*, 211 (*al.* 109), n. 14: "*Quaecunque* [*monacha*] *convicio vel maledicto vel etiam criminis obiectu alteram laeserit, meminerit satisfactione quantocius curare quod fecit, et illa quae laesa est, sine disceptatione dimittere. Si autem invicem se laeserunt, invicem sibi debita relaxare debebunt propter orationes vestras; quas utique quanto crebriores habetis, tanto sanctiores habere debetis. Melior est autem quae quamvis ira saepe tentatur, tamen impetrare festinat, ut sibi dimittat, cui se fecisse agnoscit iniuriam, quam quae tardius irascitur et ad veniam petendam difficilius inclinatur. Quae non vult dimittere sorori, non speret accipere orationis effectum; quae autem nunquam vult petere veniam aut non ex animo petit, sine causa est in monasterio, etiamsi non inde proiciatur. Proinde vobis a*

If the insult was committed in actions, it should not merely be apologized for, but restitution must be made for the material damage inflicted.

The duty of making restitution ceases when the victim has obtained satisfaction either by a judicial sentence or by self-help, *e. g.*, by returning the insult.

2. A *calumny* can be repaired by an unconditional retraction of the falsehood uttered (*retractatio*). This must be made orally or in writing in a way which men of good judgment deem sufficient. Public calumnies,—such as have appeared in newspapers, for instance,—must be publicly retracted by him who started them and in the same manner (*verbo vel scripto*) in which they were circulated. This obligation admits of no exception, and the claim of inability does not avail against it. The calumniator must ascribe all injurious consequences of his act to himself and, consequently, is bound to make restitution even when his own honor is at stake, for *"melior est conditio innocentis quam nocentis,"*

verbis durioribus parcite; quae si emissa fuerint ex ore vestro, non pigeat ex ipso ore proferre medicamenta, ex quo facta sunt vulnera. Quando autem necessitas disciplinae minoribus coercendis dicere vos verba dura compellit, si etiam in ipsis modum vos excessisse sentitis, non a vobis exigitur, ut ab eis veniam postuletis, ne apud eas quas oportet esse subditas, dum nimia servatur humilitas, regendi frangatur auctoritas, sed tamen petenda est venia ab omnium Domino, qui novit etiam eas, quas plus iusto forte corripitis, quanta benevolentia diligatis." (Migne, *P. L.*, XXXII, 964).

that is to say, the right of the innocent goes before that of the guilty. Besides, to retract a calumny, is not only a confession of the wrong committed, but likewise a proof that the sinner recognizes his fault and is willing to correct it.

The duty of retracting a calumny rests also upon those who have helped to spread it. In the event of their failure the obligation devolves upon the originator of the calumny. The latter is bound also to make good all the temporal or material damage arising from his sin, even that which results from the fact that the calumniated person can regain the confidence of his fellowmen only for a considerable time after the retraction of the calumny.

A person guilty of calumny may be excused from the duty of retraction for one or other of several reasons: (a) the unimportance of the matter involved; (b) the voluntary renouncement on the part of the victim of his right to a retraction;—this reason will hold, if the victim is in a position freely to dispose of his honor and good name, as, for example, members of a religious community are not;—(c) if the victim has in the meantime regained his good name by other means, as, for example, by a judicial sentence; (d) if, in consequence of the length of time that has elapsed, the matter has fallen into oblivion or

those influenced by the evil report can no longer be reached.

3. In case of detraction restitution may be made indirectly by excusing the faults of the victim as much as possible and emphasizing his good qualities, in order to enable him to regain the good reputation necessary for his social position, and by accusing oneself of having made unwarranted or unconsidered statements. In regard to the material damage done, the same rules apply as in the case of calumny. Though a retraction cannot always be strictly demanded, it will as a rule go far towards effecting a reconciliation.

The duty of restoring the good name of an injured neighbor is personal; that of making restitution for material damage caused by calumny or detraction falls also upon the heirs.[2] To protect one's good name, as has been explained in a previous volume, is a duty, especially when a whole class of persons is involved. When this is not the case, a man may go far in humbling himself for Christ's sake,[3] whose noble example encourages us not only to forgive our enemies, but also to suffer detraction and calumny in silence.[4]

"There are those who deem it weakness to forgive insults," says a modern writer; "if this view were correct, God would be the weakest Being in Heaven and on earth, for no one forgives as much as He."

2 Gury, *Comp. Theol. Mor.*, I, n. 473.

3 1 Cor. VI 7; IX, 13–15; 1 Pet. IV, 14–16.

4 Matth. XVIII, 21–35; XXVI, 62 sq.; XXVII, 12; John XVIII, 19–21; cfr. Ps. CVIII, 14; Prov. XII, 16; Matth. V, 44; XXIII, 34.—Seneca, *Epist.*, 94, 28: *"Iniuriarum remedium est oblivio."*

The saintly Bishop Sailer said: "I would rather allow myself to be innocently calumniated for ten years, than spend one day in defending my honor."

READINGS.—St. Alphonsus, *Theol. Mor.*, l. III, n. 986 sq. (ed. Gaudé, II, 373 sqq.).—J. Kutschker, *Die Lehre vom Schadenersatz*, Olmütz 1851, pp. 521 sqq.—H. Noldin, S.J., *Summa Theol. Mor.*, Vol. II, pp. 672 sqq., 680.—A. Tanquerey, *Synopsis Theol. Mor. et Past.*, Vol. III, pp. 245 sqq.

CHAPTER IV

DUTIES WITH REGARD TO THE MATERIAL POSSESSIONS OF OTHERS

SECTION 1

THE RIGHT TO LIFE

As every man is strictly bound to provide for his bodily welfare, that is, his life, health, and liberty, so he is also obliged, both in justice and charity, to respect the bodily welfare of his fellowmen by protecting and promoting their life, health, and liberty, and abstaining from whatever might unjustly endanger or injure these possessions.[1]

This general obligation assumes special forms in the duties known as proper to one's state of life, *e. g.,* those which bind parents in relation to their children, superiors in relation to their subjects, employers in relation to their employees, and so forth.

But life, health, and liberty are not supreme

1 See this *Handbook,* Vol. III, 11 sqq., 21 sq., 24 sqq., 29, 33, 36, 57, 97.—Cfr. St. Augustine, *De Moribus Eccl. Cath.,* l. I, c. 28, n. 56 (Migne, *P. L.,* XXXII, 1334).

blessings, and may consequently be sacrificed whenever higher interests require or permit it. In other words, it is morally permissible, for the sake of some higher good,—for example, the public welfare,—to employ compulsion toward one's neighbor, to deprive him of minor goods, to subject him to bodily suffering, or to take away his liberty. Such higher goods are, for instance, education, life, health, and the public order.[2]

1. A father in raising his child may apply bodily force by inflicting pain or curtailing liberty, provided he does not endanger the child's life, health, or morals. But the application of such means must always proceed from morally good motives (*causae correptionis et disciplinae*) and not exceed reasonable bounds (*correptio moderata*.[3]

2 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 65.—Idem, *Contra Gent.*, III, 146, n. 3: *"Illud quod est necessarium ad conservationem boni, non potest esse secundum se malum. Ad conservationem autem concordiae inter homines necessarium est, quod poenae malis infligantur. Punire igitur malos non est secundum se malum;* n. 4: *Item, bonum commune melius est quam bonum particulare unius. Subtrahendum est igitur bonum particulare, ut conservetur bonum commune;* n. 5: *Praeterea sicut medicus in sua operatione intendit sanitatem, quae consistit in ordinata concordia humorum, ita rector civitatis intendit in sua operatione pacem, quae consistit in civium ordinata concordia. Medicus autem abscindit membrum putridum bene et utiliter, si per ipsum immineat corruptio corporis. Iuste igitur et absque peccato rector civitatis homines pestiferos occidit, ne pax civitatis turbetur."*—Cfr. Linsenmann, *Moraltheologie*, pp. 462 sqq.

3 St. Augustine, *Serm.*, 13 (*al.* 94 *De Tempore*), n. 8: *"Adhibeantur poenae, non recuso, non interdico, sed animo amantis, animo diligentis, animo corrigentis."*—*Ibid.*, n. 9: *"Non enim filium tuum non erudis. Et prius agis, ut, si fieri potest, pudore et libera-*

2. With the consent of the patient a competent physician may perform *operations* on his bodily organs, mutilate him or amputate a limb for the purpose of preserving his life and health, and, providing no danger arises therefrom to health or good morals, employ narcotics (*opium* or *chloroform*) in order to deaden or ease pain. In the case of children or mental defectives the necessary consent may be given by the parents or guardians; in the case of unconscious or seriously injured patients consent may be reasonably presumed.[4]

3. In the interest of the public welfare, the civil authorities have the right and the duty to employ compulsory measures in order to *curb immorality* and prevent the spread of opinions or views dangerous to society, for instance, to forbid the sale of obscene books and pictures. But this duty binds only when there is a political or moral necessity of taking such measures, *i. e.,* when they are demanded by the common welfare and it is likely that they will produce the desired results. Since spiritual actions cannot be imposed or prevented

litate erudiatur, erubescat patrem offendere, non tamquam severum iudicem timeat. Gaudes ad talem filium. Sed si fuerit forte ista contemnens, adhibes et verbera, incutis poenam, ingeris dolorem, sed quaeris salutem. Multi amore, multi timore correcti sunt, sed per tremorem timoris ad amorem pervenerunt." (Migne, *P. L.,* XXXVIII, 111).—Cfr. St. Thomas, *Summa Theol.,* 2a 2ae, qu. 65, art. 2.—Gury, *Comp. Theol. Mor.,* I, n. 405.

4 A. v. Gschmeidler, *Der ärztliche Versuch am lebenden Menschen,* Vienna 1906.

by physical force, it is advisable at first to employ moral rather than physical means. The truth is strong enough to hold its own against any error. "Take unto you the helmet of salvation and the sword of the spirit, which is the word of God," says St. Paul.[5] On the other hand, whatever does not come from God must die for want of vitality, for "if a council or a work be of men, it will come to nought"; but if it be of God, no human agency can overthrow it.[6]

It must be admitted that physical force used against a man ill accords with his dignity as a human being, and is apt to dull his sense of honor. Nevertheless there may be circumstances in which *corporal punishment* appears as the only adequate means of retribution, for instance, for brutal crimes. Corporal punishment cannot abolish these crimes, but it usually acts as a deterrent on the criminals, for experience shows that even the most brutal criminals can be accustomed to some sort of order and discipline by whipping or imprisonment. The right of those in authority to inflict corporal punishment, nay, if necessary, even death, corresponds to their duty of protect-

5 Eph. VI, 17.—Cfr. The profession of faith prescribed for the Waldensians by Innocent III: *"Credimus, quod disputando et exhortando modis omnibus secundum Deum debeamus illos confundere et eis verbo Dominico . . . fronte usque ad mortem libera contraire."* (See Denzinger-Bannwart, n. 426). H. Roeren, *Die öffentliche Unsittlichkeit und ihre Bekämpfung,* Cologne 1906.—Marx, *Der Kampf gegen die öffentliche Unsittlichkeit,* Freiburg i. B. 1907.

6 Acts V, 38.

ing and defending the community against criminals, as well as to the right of self-defense.

In regard to punishment it is well not to lose sight of the fact, which modern humanitarianism endeavors to obscure, that *punishment* is *primarily and essentially retributive* in character, and corrective or deterrent only in a secondary way. Its effect is retrospective rather than prospective, and whatever other function may belong to punishment depends upon and presupposes the retributive or retrospective function. M. Guyau and others, therefore, err in maintaining that if punishment were not corrective, it would be as blameworthy as the crime for which it is inflicted.[7]

The milder discipline prevailing in our *prisons* is undoubtedly a credit to modern civilization, because in inflicting punishment for crime, even though that punishment be primarily retributive and administered in social self-defense, the reformation of the criminal should likewise be kept in view. Besides, it is being recognized that many persons who would formerly have been considered as criminals, are in reality mental defectives and should be treated in special institutions. However, Dr. Ross is undoubtedly right in warning against excessive *sentimentality in dealing*

7 For a discussion of this question see M. Cronin, *The Science of Ethics*, Vol. I, pp. 555 sqq.

with criminals. "While humane standards are gratifying," he says, "there is a danger of sentimentality. There are some vicious criminals who will not respond to kindness, and there are also some men who need to be deterred from committing crimes by fear of condign punishment. Such criminals, whatever their intellectual status, are moral defectives, and if found incorrigible and not amenable to teaching or helping, should be made *life prisoners.*" [8]

READINGS.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 108, art. 1, 4; 1a 2ae, qu. 87.—H. Noldin, S.J., *Summa Theol. Mor.*, Vol. II, pp. 353 sqq.—J. E. Ross, C.S.P., *Christian Ethics*, pp. 266 sqq., 409 sqq.—J. Rickaby, S.J., *Moral Philosophy*, pp. 202 sqq., 359 sqq.—M. Cronin, *The Science of Ethics*, Vol. I, pp. 554 sqq.; Vol. II, pp. 109 sq.

8 *Christian Ethics*, p. 409.—Cfr. Stade, *Gefängnisbilder*, pp. 205 sqq.; F. Berolzheimer, *Die Entgeltung im Strafrecht*, Munich 1903, pp. 449 sq., 460.—F. Auer, *Zur Psychologie der Gefangenschaft*, Munich 1905, pp. 11, 50.—R. Wrede, *Die Körperstrafen bei allen Völkern von den ältesten Zeiten bis auf die Gegenwart*, Dresden 1899.

SECTION 2

THE RIGHT OF SELF-DEFENSE

1. DEFINITION.—By self-defense (*defensio naturalis sive necessaria*) we mean protecting one's person or property against unjust aggression. It implies the application of physical force to the extent of slaying the aggressor, if necessary, for necessity knows no law.[1]

2. The conditions under which this right may be exercised can easily be deduced from the definition given above.

a) We are allowed to employ physical force in self-defense only when we are actually attacked and have no other means (such as flight, calling for help, etc.) to protect our person or property from serious harm.[2] It is not necessary, how-

1 *Regula Iuris in V° Decr. Gregorii* IX, n. 4: *"Quod non est licitum in lege, necessitas facit licitum."*—C. 11 *de Consecr.: "Necessitas non habet legem."*—Cicero, *Pro Milone*, c. 4: *"Silent leges inter arma."*

2 Among the Propositions condemned by Alexander VII are these:—No. 17: *"Est licitum religioso vel clerico, calumniatorem crimina de se vel de sua religione spargere minantem occidere, quando alius modus defendendi non suppetit: uti suppetere non videtur, si calumniator sit paratus vel ipsi religioso vel eius religioni publice et coram gravissimis viris praedicta impingere, nisi occidatur."*—No. 18: *"Licet interficere falsum accusatorem, falsos testes ac etiam iudicem, a quo iniqua certo imminet sententia, si aliâ viâ non potest innocens damnum evitare."* (Denzinger-Bannwart, n. 1117 sq.)

ever, to wait until the damage begins to be inflicted, but one may forestall a threatened attack.

b) The attack must be wrongful and unjust, that is to say, the aggressor must not be justified in his conduct by his office or some real obligation, for there is no right of self-defense against a merited punishment.

c) The right of applying physical force in self-defense extends no farther than is necessary to repel an immediate and unjust attack upon oneself or another (*moderamen inculpatae tutelae*). Accordingly, manslaughter is not justified if inflicting a wound is sufficient to repel the aggressor; nor is wounding justified if disarming will do. In thus qualifying the right of self-defense it is, of course, supposed that one has the time and opportunity to choose the milder in preference to the severer method. Exceeding the *moderamen inculpatae tutelae* is a grievous sin only when done with full knowledge and of set purpose.

d) The use of physical force is permitted not only in defending one's life against direct attacks, but also in defending or safeguarding one's possessions, *e. g.,* health, integrity of the body, chastity, property. If this were not the case, the right of self-defense would be illusory. Note, however, that killing or wounding another in an attack upon one's honor or good name is not allowed because reparation is possible in other

ways, *e. g.*, by court proceedings, etc. Nor is a husband allowed to kill his wife if he catches her in the act of adultery.[3]

e) The use of physical force is permitted not only in defending one's own person or property, but also in defending the person or property of one's neighbors. But we are under no strict obligation to defend others at the risk of life, unless they happen to be very near and dear to us, as parents, children, husband or wife, brother or sister.

f) In exercising the right of self-defense one must be guided by no other intention than that of warding off harm and injustice. It would be wrong, therefore, to harbor a feeling of hatred or revenge against the aggressor.[4]

The civil law in some countries does not pun-

3 *Prop. damn. ab Innoc. XI,* n. 30: *"Fas est viro honorato occidere invasorem qui nititur calumniam inferre, si aliter haec ignominia vitari nequit; idem quoque dicendum, si quis impingat alapam vel fuste percutiat et post impactam alapam vel ictum fustis fugiat." Ibid.,* n. 31: *"Regulariter occidere possum furem pro conservatione unius aurei." Ibid.,* n. 32: *"Non solum licitum est defendere defensione occisiva quae actu possidemus, sed etiam ad quae ius inchoatum habemus et quae nos possessuros speramus." Ibid.,* n. 33: *"Licitum est tam heredi quam legatario, contra iniuste impedientem, ne vel hereditas adeatur vel legata solvantur, se taliter defendere, sicut et ius habenti in cathedram vel praebendam contra earum possessionem iniuste impedientem."* (Denzinger-Bannwart, n. 1180 sqq.)

4 Gury, *Comp. Theol. Mor.,* I, n. 411: *"Non licet occidere aggressorem post factum, quia esset vindicta, non defensio. Excipitur casus, in quo aggressio effective, ut aiunt, in aggressoris fuga rem furtivam auferentis perduraret. Non licet puellae occidere aggressorem honoris sui post oppressionem. Potest tamen illum percutere, modo non graviter laedat, quia nisi tali modo constantiam suam et displicentiam ostendat, non facile discedet homo nequam aut facile ad sollicitationem redire poterit."*

ish excesses in the exercise of the right of self-defense if they are committed under the influence of fear or fright; but from the moral point of view such excesses are not always blameless.

3. The right of self-defense is based on social ethics. Man, as a member of society, has a claim to be protected in the exercise of his rights against illegitimate interference by others, and since public authority cannot always be promptly invoked, this right in such cases passes to the individual, who, representing as it were, the whole community in his person, acts in its name. Thus he at the same time safeguards an important social interest, namely, public safety and the protection of life and property against unjust aggression and violence. In this consideration lies the reason why the use of physical force in self-defense may be carried to the extreme of manslaughter, if necessary, even in the protection of goods which are in themselves inferior to human life, because these goods in case of necessity have attached to them the *bonum commune, i. e.,* the great and general boon of public security and the protection of law and order. To forbid the use of force in such cases would endanger the safety of all and encourage criminals to rob and murder their fellowmen. The right of self-defense is confirmed by an instinct, deeply implanted in hu-

man nature, which moves every man to resist attacks upon himself and his own.[5]

Against the doctrine here set forth the opponents of Catholic moral teaching raise many objections. Space permits us to consider only a few of them.

a) The first is based on Matt. V, 38, where our Lord says: "You have heard that it hath been said, an eye for an eye, and a tooth for a tooth; but I say to you not to resist evil [*i. e.*, evil men who would injure you]; but if one strike thee on thy right cheek, turn to him also the other, and if a man will contend with thee in judgment, and take away thy coat, let go thy cloak also unto him." But this command does not refer to the right of self-defense, but to retribution inspired by hatred and revenge. The most that can be concluded from our Lord's utterance is that men should refrain from exercising the right of self-defense when the good imperilled is merely an individual and not a social good. Christ Himself, who gave us the most beautiful example of patient suffering, keenly resented injustice on the part of those who were commissioned to dispense justice,[6] and St. Paul censured the magistrates who had thrust him into prison.

b) From the standpoint of ethics and jurisprudence it is asserted that homicide committed in self-defense is a grievous wrong for two reasons. First, because none of the things one means to defend ranks as high as the

5 Cicero, *Pro Milone*, c. 4: *"Est haec non scripta, sed nata lex, quam non didicimus, accepimus, legimus, verum ex natura ipsa arripuimus, hausimus, expressimus, ad quam non docti, sed facti, non instituti, sed imbuti sumus: ut si vita nostra in aliquas insidias, si in vim, si in tela aut latronum aut inimicorum incidisset, omnis honesta ratio esset expediendae salutis."*—Cfr. J.E.Ross, C.S.P., *Christian Ethics*, pp. 267 sq.

6 John XVIII, 23; Acts XVI, 37; XXIII, 3.

life of the aggressor, and, secondly, because by killing a man we rob him not only of his physical, but likewise of eternal life, because we send him to the tribunal of the heavenly Judge in a state of mortal sin. Hence, it is argued further, it is a duty of justice as well as of charity, at least for him who is in the state of sanctifying grace, to sacrifice his own life rather than to endanger or destroy the life of an unjust aggressor. To this argument we reply: It is true that the things threatened or endangered by an unjust aggressor are of less worth than the life of the aggressor. But higher even than the life of the aggressor stand the social order and public security, and, secondly, if the aggressor loses his life and forfeits eternal salvation, this is not the fault of him who makes use of the right of self-defense when attacked, but the effect of the aggressor's own sin, as he has it entirely in his power to save himself by omitting the attack or desisting from it. Finally, the one who thus defends himself can cite in his behalf the juridical axiom: *"Scienti et volenti non fit iniuria."* He who simply makes use of his rights injures nobody. It would not even be advisable to sacrifice one's own life for that of an unjust aggressor, because a man's duty of preserving his life for his own sake and that of his dependents may be more binding than any consideration for the life of a scoundrel, who probably would commit other crimes if he were spared.

Some writers have carried the principles underlying the doctrine just explained so far as to justify the *assassination of tyrants.* They argue that it is possible for a whole nation to be in a similar predicament towards an unjust usurper (*tyrannus tituli s. usurpationis*) or towards a le-

gitimate ruler who shamefully abuses his power (*tyrannus regiminis s. potestatis abusu*), as an individual citizen is towards an unjust aggressor and that, as the individual in time of need represents the right of the entire community and is entitled to exercise that right in the name of all, so, too, an individual may be allowed to kill an unjust ruler in order to safeguard the life and property of the whole people. But the assumptions underlying this contention are untenable. In the first place, the right of using physical force in self-defense embraces only those cases in which the personal and private right of the individual is threatened, though that right may, of course, coincide with the interests of society; secondly, no individual citizen is allowed to pose as the delegate or mandatory of the people against the ruler when the latter acts in his official and public capacity. The case would be different if the ruler privately assaulted the life or property of a citizen; then the latter could claim and exercise the right of self-defense. Thus a woman criminally assaulted by a ruler would be allowed to kill him in order to preserve her chastity.

The doctrine of the lawfulness of killing tyrants is often ascribed to the Jesuits, but unjustly. "The Jesuit moralists, even in the 16th century, before the assassination of the French King, Henri III, and the work of Mariana evoked a deluge of pamphlets on the subject,

never did teach the doctrine of the lawfulness of tyrannicide, permitting, that is, the assassination by a private individual of a monarch who, though a usurper and a tyrant, was actually in possession of the throne. As Duhr and others have shown by copious citations, Salmeron, Lessius, Gregory de Valentia, Becan, Gretser, Sat, Azor, Escobar, etc., in a word all the great Jesuit casuists of that period, maintained precisely the contrary." [7]

READINGS.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 64 (Rickaby, *Aquinas Ethicus*, II, 39 sqq.).—St. Alphonsus, *Theol. Mor.*, l. III, n. 380–391 (ed. Gaudé, I, 631).—Gury, *Comp. Theol. Mor.*, Vol. I, n. 407–411.—F. X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 465 sqq.—V. Cathrein, *Moralphilosophie*, Vol. II, 4th ed., pp. 99 sqq.—O. von Alberti, *Das Notwehrrecht*, Stuttgart 1901.—M. Lossen, *Die Lehre vom Tyrannenmord*, Munich 1894.—R. Böhme, *Der Tyrannenmord*, Munich 1905.—F. Heiner, *Die Jesuiten und ihre Gegner*, Munich 1906, pp. 79 sqq.—H. G. Schmidt, *Die Lehre vom Tyrannenmord*, Tübingen 1901.—V. Cathrein, S.J., *Moralphilosophie*, Vol. II, 5th ed., pp. 694 sqq.—B. Duhr, S.J., *Jesuitenfabeln*, 4th ed., pp. 694 sqq.—T. Parkinson in *The Month*, March 1873.

7 Herbert Thurston, S.J., in the *Catholic Times*, London and Liverpool, Sept. 16, 1922, p. 8: "A single exception there was, the Spanish Father Mariana, who in his book, *De Rege et Regis Institutione*, owing to strong political sympathies which also brought him into conflict with the General of the Society, expressed enthusiastic approval of the murder of Henri III by Jacques Clément. The censor who gave his *nihil obstat* to the book admitted he had not read it, the General of the Jesuits, when it was brought to his notice, condemned it in the strongest terms, and the non-Catholic historian, von Ranke, fully allows that 'Mariana's doctrine cannot be regarded as the teaching of his Order or of the Catholic Church.'" (*Werke*, xxiv, 236). No Jesuit writer in subsequent times has ever identified himself with the views of Mariana, though in the following century such great names in the world of Protestant thought as Hugo Grotius, John Milton, and Leibnitz went quite as far as he did.

SECTION 3

THE MORAL PRINCIPLES INVOLVED IN WAR

1. LAWFULNESS OF WAR.—What self-defense is for the individual, that war (*bellum*) is for society or the State, namely, the act of warding off unjust attacks or of asserting important rights by force of arms.[1]

The purpose of war, therefore, is to protect the material, moral, and spiritual possessions of a nation, such as religion, liberty, independence, honor, good name, its right and power to conclude treaties, etc. When war is waged within the limits of a just self-defense, that is, after all other means to preserve the peace [2] (such as diplo-

1 J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 418: *"Bellum est pugna multitudinis contra multitudinem extraneam reipublicae defendendae aut vindicandae causa. Hinc differt: 1. A rixa, quae est pugna paucorum contra paucos; 2. A seditione, quae est tumultus vel conflictus multitudinis contra politicam societatem."*

2 Cfr. Deut. XX, 10. Cfr. J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 419: *"Ad bellum iustum et licitum sequentia requiruntur: 1. Auctoritas publica, id est suprema, nullum alium superiorem in civilibus agnoscens. Ratio est, quia ubi maior auctoritas habetur, haec de lite iudicare debet; 2. Causa iusta et gravis, quae sit praeponderans incommodis ex bello secuturis, v. g. regnum vel provincia recuperanda aut iniuria gravis reipublicae facta propulsanda vel subditorum rebellio reprimenda etc.; 3. Debitus bellandi modus, scilicet ut ante bellum a parte adversa condigna requiratur satisfactio, quae si offeratur, ex iustitia acceptari debet; ubi enim bellum desinit esse necessarium, desinit quoque esse iustum."* N. 424: *"Princeps perspecta belli iustitia eam proponere debet parti adversae nec bellum inchoare potest,*

matic negotiations, arbitration, reprisals, blockade, etc.) have proved ineffective, and the sword has become the final and inevitable arbiter, and if the *moderamen inculpatae tutelae* is duly observed, war is not only morally lawful, but may be a social duty, and participation therein may become a highly meritorious act.[3]

God repeatedly commanded His Chosen People to wage war against their enemies and lent them His special assistance and co-operation.[4] St. John baptized soldiers, but neither he nor Christ Himself required of them that they renounce their profession;[5] all they asked of them was,

si satisfactio competens ei offeratur, immo etiam incoeptum bellum oblata satisfactione adaequata relinquere tenetur, sin minus ex rigore iustitiae, saltem plerumque ex caritate, modo pars altera omnes expensas iam factas compensare velit nec ad bonum publicum necesse sit, ut ea retundatur."

3 Cfr. Judg. XI, 27.—*Gury, op. cit.*, Vol. I, n. 419: *"Bellum per se licitum est sive ad iniuriam repellendam sive ad ius suum vindicandum. Ratio est, quia societas quaelibet independens ab alia societate habere debet medium se tuendi contra iniuriam et ius suum vindicandi. Interdum vero non suppetit aliud medium ad hunc finem obtinendum nisi bellum. Etenim cum altiora desint, ad quae nationes seu principes recurrere queant, bellare possunt ad satisfactionem ab alia societate obtinendam."*

4 Ex. XIV, 13 sq.; Deut. I, 29 sq.; III, 21 sqq.—Cfr. F. Schwally, *Semitische Kriegsaltertümer*, Leipsic 1901, 1. Heft, pp. 3 sqq.

5 Cfr. St. Augustine, *Contra Faustum Manich.*, l. XXII, c. 74: *"Alioquin Ioannes, quum ad eum baptizandi milites venirent dicentes: Et nos quid faciemus? responderet eis: Arma abicite, militiam istam deserite, neminem percutite, vulnerate, prosternite. Sed quia sciebat eos, quum haec militando facerent, non esse homicidas, sed ministros legis, et non ultores iniuriarum suarum, sed salutis publicae defensores, respondit eis: Neminem concutiatis," etc.* (Migne, *P. L.* XLII, 447.) Idem, *Epist.* 189 (*al.* 205), n. 4: *"Noli existimare, neminem Deo placere posse qui in armis bellicis militat. In his erat sanctus David, cui Dominus tam magnum perhibuit testimonium; in his etiam plurimi illius temporis iusti. . . . Non eos [milites] utique [Ioannes] sub armis militare prohibuit, quibus suum stipendium sufficere debere praecepit."* (*P. L.*, XXXIII, 855).

to "do violence to no man," *i. e.* abstain from injustice.[6] St. Paul says that the civil authority, as the representative of God, has the right of wielding the sword in order to protect law and order against domestic evil-doers and foreign enemies.[7]

If some of the Church Fathers objected to Christians serving as soldiers, they did so for the reason that the life of a soldier in their days was full of danger to faith and morals, and that the ancient State, with its emperor-worship, was essentially pagan. There is sufficient evidence to show that the early Christians acknowledged legitimate warfare as morally licit.[8] The canonical law exempting clerics from military service was based upon the supernatural and pacific character of their office.[9] The Church not only admits that war may be just, but she admonishes her children to fight for their highest and most sacred possessions.[10]

2. GUIDING PRINCIPLES.—(a) Every just war is by its very definition *defensive* (*bellum defensivum*), because war is permitted only as an extreme means of self-help or to protect a na-

6 Luke III, 14; Acts X, 1 sqq.

7 Rom. XIII, 1–5; cfr. John XIX, 10 sqq.

8 Cfr. Ch. Lupus, *De Antiqua Disciplina Christianae Militiae*, XI (*Opera Omnia*, Venice ed., 1729), pp. 94 sqq.—Hefele, *Beiträge zur Kirchengeschichte*, Vol. I, pp. 20 sqq.—K. Künstle, *Zwei Dokumente zur altchristlichen Militärseelsorge*, Mayence 1900, pp. 3 sqq.—A. Bigelmair, *Die Beteiligung der Christen am öffentlichen Leben*, Munich, 1902.—A. Harnack, *Militia Christi*, Tübingen 1905, pp. 46 sqq.

9 *Syllabus Errorum*, n. 32 (Denzinger-Bannwart, n. 1732).—C. Richert, *Die Anfänge der Irregularitäten*, Freiburg 1901, pp. 114 sqq.

10 *Errores M. Lutheri damn. a Leone X*, n. 34 (Denzinger-Bannwart, n. 774).

tion's legitimate rights or interests. It does not, however, follow that when a State is unjustly menaced in its vital interests,—be they material, moral, or spiritual,—it is not permitted to make use of its right *per modum praeventionis, i.e.,* to forestall a threatening attack, for instance, by occupying foreign territory, compelling enemy troops to lay down their arms, cutting off their supplies, destroying fortifications, and so forth. Such a war, though seemingly offensive, would in reality be defensive, for the justice of a war depends not upon its physical, but upon its moral authorship. It is also licit and therefore just, nay, it may even be a duty for a nation to assist another, especially an allied nation, in warding off an unjust attack.

The socalled *principle of non-intervention,* that is, non-interference of a State in hostilities between other States, unless its own territory or rights are attacked, may be justifiable from a purely political point of view, but not morally,[11] because if a nation unjustly attacks another, all others are threatened in their very existence, and under the law of nations every State is in duty bound to protect right and justice. Intervention, if exercised in accordance with the principles of morality, constitutes an effective support of international law and order. For the

11 *Syllabus Errorum,* n. 62: *"Proclamandum est et observandum principium, quod vocant de non-interventu."* (Denzinger-Bannwart, n. 1762).—Cfr. M. Pachtler, S. J., *"Das Prinzip der Nichtintervention,"* in the *Stimmen aus Maria-Laach,* Vol. I (1871), pp. 107 sqq., 196 sqq.—A. Stöckl, *Das Christentum,* Vol. II, pp. 353 sqq.; Vol. III, pp. 22 sqq.

rest, its exercise in most cases will not entail war, but merely lead to diplomatic negotiations.

b) The *moderamen inculpatae tutelae* must be kept inviolate even in a just war. Consequently, war may not be continued longer than is necessary to accomplish its object, that is, until full satisfaction or reparation has been obtained and peace secured. Disregard of this principle would be a violation of the moral law of nature and involve the duty of restitution. To undertake or continue a war solely for the acquisition of territory or as a preventive of internal dissensions would be positively criminal.[12]

Secondly, not all is fair in war. Absolutely damnable and illicit means of warfare are: lying, perjury, the intentional dissemination of false reports, *e. g.,* of faked victories. Among the licit means are: *espionage, stratagems, ambuscades,* etc.; these are allowed because they are not based on lies pure and simple, but merely furnish the enemy an occasion for drawing false conclusions.

Third, the means employed in warfare must

12 Osee V, 13.—St. Augustine, *De Civ. Dei,* l. IV, c. 6: *"Inferre bella finitimis et inde in cetera procedere ac populos sibi non molestos sola regni cupiditate conterere et subdere, quid aliud quam grande latrocinium nominandum est?"* (Migne, *P. L.,* XLI, 116 sq.)—*Contra Faustum Manich.,* l. XXII, c. 74: *"Quid culpatur in bello? An quia moriuntur quandoque morituri, ut domentur in pace victuri? Hoc reprehendere timidorum est, non religiosorum. Nocendi cupiditas, ulciscendi crudelitas, impacatus atque implacabilis animus, feritas rebellandi, libido dominandi et si qua similia, haec sunt quae in bellis iure culpantur."* (*P. L.,* XLII, 447).

not be more cruel than is necessary for the successful termination of the bloody struggle.

It goes without saying that the direct slaying of innocent and unarmed persons, such as women, children, and old men, or the dishonoring of women can never be justified under any pretext.[13]

Fourth, the right to kill the enemy or damage his property belongs to individual soldiers or single divisions of an army only in so far as they have been authorized to proceed by legitimate authority. Therefore, if an army, or any single division thereof, marches through enemy territory plundering and robbing the populace, without the express or at least implicit authorization of its commander, it is no better than a band of marauders and its members are bound to restitution. Officers bearing a *flag of truce* are inviolable.

c) In addition to these general principles, derived from the moral law of nature, the so-called international law has laid down others which deserve mention. One of these is that the laws of war apply only to active combatants, *i. e.*, persons actually wielding or entitled to wield arms.

13 St. Thomas, *Summa Theologica*, 2a 2ae, qu. 40, art. 3: "*Licet in bello insidias parare, stratagemata adhibere, ut hostes fallacius decipiantur et in varia discrimina coniciantur. Haec enim non reputantur mendacia, quia culpa sua decipiuntur adversarii, quum media illa in bello adhiberi soleant; sic licet fingere fugam, uti vexillis hostium etc. Illicitae autem sunt fraudes quae nulla prudentia possunt praecaveri, v. g., veneno inficere puteos et fontes etc. Haec enim sensu communi contra iura belli pugnant.*"

Hence it is not allowed to kill a disarmed or captured soldier. Non-combatants engaged in the service of an army, such as chaplains, physicians, nurses, etc., may not be killed, but they may be made captives. *Prisoners of war* should be treated humanely, but not better than the soldiers of one's own army, lest cowardly members of the latter be tempted to surrender. Weapons which render war more cruel without hastening the decision are forbidden. To this class belong explosive hand guns, poisoned arrows, poison substances, the poisoning of wells, etc. Those living peaceably in enemy territory should not be treated harshly and their property should be spared unless it is needed to enable the invading army to live. The retention of hostages, the devastation of the country, the destruction of crops, the burning of dwelling houses and other necessities of life are permissible only in exceptional cases, when necessary for the carrying out of an important operation or to overcome the hostile attitude of the populace. Wounded soldiers who are no longer able to fight should be protected against attacks upon their person.[14]

14 Of the *barbarities of war* Fr. Ross justly says: "Once the dogs of war are let loose, it is difficult to keep them within the bounds of civilized Christian custom. The records of Sherman's march to the sea, of English conduct in the Sepoy rebellion, of our water cure and other tortures in the Philippines, of the international intervention in China during the Boxer rebellion, do not make us very proud of humanity. There is an old saying, 'Scratch an Englishman and you find a barbarian,' and this is equally true of the Ger-

Under the *Geneva Convention,* of August 22, 1864, all military hospitals and ambulances with their attendants, physicians and nurses, when carrying the Red Cross, as well as all buildings containing wounded soldiers who display the Red Cross flag, are neutral and must not be attacked or molested. Citizens who receive wounded war victims into their houses shall be excused from quartering troops and also, partially, from paying war contributions.[15]

The use of *savages* or convicted *criminals* is morally objectionable, because they are apt to disregard the laws of war. Attempts to induce enemy soldiers to break their oath of loyalty or to rebel against their superiors are likewise inadmissible.

d) *Voluntary participation* in a war which one regards as unjust is sinful. Since, however, the individual citizen is rarely in a position to form a reliable judgment concerning the justice or injustice of a war, and since, moreover, a soldier employed or drafted by the government (*miles subditus*) has not the right to question the justice of an international quarrel, he must obey his supe-

mans, French, Italians, and Americans." (*Christian Ethics,* pp. 426 sq.).

15 H. Dunant, *Un Souvenir de Solférino,* Geneva 1862; 2nd ed., Paris 1871; C. Lueder, *Die Genfer Konvention,* Erlangen 1876; H. Lammasch, *Die Fortbildung des Völkerrechts durch die Haager Konferenz,* Stuttgart and Vienna 1900; A. Zorn, *Das Kriegsrecht zu Lande in seiner neuesten Gestaltung,* Berlin 1906; J. E. Ross, C.S.P., *Christian Ethics,* pp. 430 sq.; Lawrence, *Principles of International Law,* Boston 1909.

rior officers even though he doubts the justice of the cause. But he is never permitted to co-operate in manifest injustice or criminal acts of violence, *e. g.,* the maltreatment of peaceful non-combatants or the killing of soldiers who have unconditionally surrendered. *Mercenaries* (*milites conducti*), who have been hired before the outbreak of a war, may take part therein even if they doubt its justice. The case is different with those who volunteer their services after the war has started (*milites nondum conducti*); if they are in doubt as to the justice of the cause in which they intend to enlist, they are in duty bound to obtain certainty, for no man is permitted to co-operate in an unjust cause.[16]

The causes of war are as a rule hidden to the ordinary citizen, nay ofttimes even to the better informed and

16 Rom. XIII, 1 sqq.—St. Augustine, *Contra Faust. Manich.*, l. XXII, c. 74: *"Et ad hoc tributa* (Mt. 22, 21) *praestantur, ut propter bella necessario militi stipendium praebeatur."* (Migne, *P. L.*, XLII, 447).—IDEM., *ibid.*, c. 75: *"Quum vir iustus, si forte sub rege homine etiam sacrilego militet, recte possit illo iubente bellare civicae pacis ordinem servans: cui quod iubetur, vel non esse contra Dei praeceptum certum est, vel utrum sit, certum non est, ita ut fortasse reum regem faciat iniquitas imperandi, innocentem autem militem ostendat ordo serviendi."* (*P. L.*, XLII, 448).—J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 421: *"Quaeritur, an milites belligerare possint cum dubio de iustitia belli. Respondetur: 1. Si agatur de milite subdito, tenetur obedire, ubi bellum non est evidenter iniustum, quia non ad ipsum pertinet rationes superiorum examinare. 2. Si agatur de milite conducto ante bellum declaratum, potest obedire; ad hoc enim conducitur, unde fere ac si esset subditus, se gerere debet. 3. Si agatur de milite nondum conducto, tenetur inquirere de belli iustitia nec in dubio de iustitia se locare potest. Ratio est, quia nemo potest cooperari ad spoliandum alterum re quam possidet, nisi sit certus iniuste eam ab illo possideri."*

more sensitive organs of public opinion. Ordinarily, the private citizen may and should presume that his country is right. The question how far his duty of obedience goes, and for what acts of violence he may allow himself to be used, are answered by the *ius belli,* but its provisions are of little practical importance, because in case of doubt every citizen will naturally submit his subjective opinion to the supposedly more enlightened judgment of the authorities.[17]

3. Moral Estimate of War.— a) Just war is not only permissible as an act of self-defense, but it may be useful for the punishment of injustice, the restoration of law and order, and as an instrument of correction in the hands of God.[18] Nor can it be denied that a number of noble virtues, *e. g.,* loyalty, courage, self-sacrifice, fidelity to duty, are developed by and in war, and that bloody conflicts with other nations often strengthen the moral and religious fibre of a nation and promote *patriotism.* A war waged against savage tribes, may, moreover, serve the purpose of genuine culture and the legitimate needs of colonization.[19]

b) On the other hand, though a just war may prove a moral blessing for a nation or for humanity at large, even the justest war is in-

17 Cfr. F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 469 sqq.; Ross, *Christian Ethics,* p. 440.

18 Judg. II, 20 sqq.; III, 1 sqq.; Is. X, 5 sqq.; 2 Macch. V, 17 sq.

19 Cfr. Horace, *Epist.,* l. II, 1, 156 sq.: *"Graecia capta ferum victorem cepit et artes intulit agresti Latio."*

variably accompanied by so many horrors and barbarities, and entails so much material and moral destruction that it must be regarded as an evil and a terrible scourge. Though the Bible acknowledges the legitimacy of war and of the military profession, there are many passages in both Testaments which point to lasting peace as the final goal for the human race to strive after.[20] War does not fit into the ideal picture of international intercourse. Its existence and relative necessity is merely a sad proof how little even Christian nations are actuated by the spirit of charity, peace, and justice. The highest good of the State, the ideal political condition of a people, is that "rest from all enemies round about" described in Deuteronomy,[21] and permanent peace must be the first and foremost aim of every real statesman. Kant's idea of a *universal peace*[22]

20 Ps. 67, 31; Is. II, 4; Mich. IV, 1 sqq.; Matt. XXIV, 6; Mark XIII, 7; Luke XXI, 9 sq.

21 Deut. XII, 9 sq.; XXV, 19. St. Augustine, *Epist.*, 189 (al. 205), n. 6: *"Pacem habere debet voluntas, bellum necessitas, ut liberet Deus a necessitate et conservet in pace. Non enim pax quaeritur, ut bellum excitetur, sed bellum geritur, ut pax acquiratur."* (Migne, *P. L.*, XXXIII, 856).—Idem, *Epist.*, 229 (*al.* 262), n. 2: *"Magni quidem sunt et habent gloriam suam non solum fortissimi, sed etiam, quod verioris genus est laudis, fidelissimi bellatores, quorum laboribus atque periculis Dei protegentis atque opitulantis auxilio hostis indomitus vincitur et quies reipublicae pacatisque provinciis comparatur. Sed maioris est gloriae, ipsa bella verbo occidere, quam homines ferro et acquirere vel obtinere pacem pace, non bello. Nam et hi qui pugnant, si boni sunt, procul dubio pacem, sed tamen per sanguinem quaerunt."* (*P. L.*, XXXIII, 1020).

22 I. Kant, *Zum ewigen Frieden*, Königsberg 1795 (edited by K. Kehrbach, Leipsic 1881).—Cfr. F. von Holtzendorff, *Die Idee des ewigen Völkerfriedens*, Berlin 1882.—L. Stein, *Das Ideal des ewigen Friedens*, Berlin 1896.—Ch. Richet, *Les Guerres et la Paix*, Paris 1901.

has no prospect of realization because it is based for the most part upon purely worldly interests or upon so-called humanitarian or philanthropic considerations and motives, which are at bottom utopian, instead of seeking the peace of Christ which the world cannot give.[23] Nevertheless every attempt to settle international difficulties and quarrels by means of *arbitration* should be hailed with joy. An *international tribunal of arbitration* might not prevent war entirely, but it would postpone the outbreak of hostilities and thus give reason instead of passion an opportunity to speak the last word. Even though war were abolished, it would still be "sweet and meet to die for one's fatherland,"[24] and every citizen would have sufficient opportunities to prove his patriotism by faithfully performing his duties towards God and the legitimate civil authorities.

In striving for international peace it is well for us to realize that there are many strong "interests" that must be vigorously opposed. First of all come the *war traders*. "Those who en-

—K. F. Küster, *De Treuga et Pace Dei*, Cologne, 1902.—P. Meyer, *Die Idee des ewigen Friedens bei Kants Zeitgenossen*, Berlin 1903.—F. K. Geissler, *Der Krieg und die sozialen Sünden*, Jena 1905.

23 John XIV, 27; cfr. Judith IX, 10; XVI, 3: "The Lord putteth an end to wars."—St. Leo the Great, *Serm.*, 82 (*al.* 80) c. 1: *"Quamvis [urbs Roma] multis aucta victoriis ius imperii tui terra marique protuleris, minus tamen est, quod tibi bellicus labor subdidit, quam quod pax christiana subiecit."* (Migne, *P. L.*, LIV. 423).

24 Horace, *Carm.*, III, 2, 18: *"Dulce et decorum est pro patria mori."*—Cfr. Homer, *Ilias*, XII, 243.

gage in the sale of materials of war know that it is to their advantage to foster the military spirit. The more one nation spends on preparation, the more the others are forced to spend. It is an endless chain. A few individuals are enriched, but the vast majority suffer from such enormous expenditure in unproductive ways. Perhaps the problem could be partly solved by the various governments taking over the munition factories. But the solution is problematical and at best would be merely partial. For only a completely socialized State could take over all the industries directly and indirectly depending upon war. A hardly less important expression of *commercialism versus peace* is found in *yellow journalism.* Newspapers recognize that in order to sell large editions they must exaggerate. As a consequence they are absolutely conscienceless in dressing up reports of differences between nations. Again, there arises in the popular mind induced by this irresponsible journalism a certain *spread-eagleism,* an attitude that sees no fault in one's own nation, but faults innumerable in others—a loud-mouthed patriotism [*rectius:* jingoism] that is ready to call every man a traitor who happens to advocate peaceful methods. . . . This evil of yellow journalism tends to grow worse and worse. New forms of exaggeration, new appeals to this false patri-

otism must be constantly devised; for as one form grows stale, it becomes useless from a journalistic standpoint. And so one fosters the other. The public, weary of the drab dullness of everyday life, demands of the newspapers a certain amount of sensationalism and grows more rampant the more it gets." [25]

READINGS.—St. Augustine, *Contra Faust. Manich.*, l. XXII, c. 74–78.—IDEM, *Epist.*, 189 (*al.* 205), n. 4 to 6.—St. Thomas, *Summa Theologica*, 2a 2ae, qu. 40 (Rickaby, *Aquinas Ethicus*, I, 407 sqq.).—St. Alphonsus, *Theol. Mor.*, l. III, n. 402–411 (ed. Gaudé, I, 659 sqq.).—H. Grotius, *De Iure Belli et Pacis*, Amsterdam 1712.—J. Walter, *Naturrecht und Politik*, pp. 462 sqq.—A. Stöckl, *Das Christentum*, Vol. III, pp. 417 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 468 sqq.—V. Cathrein, S.J., *Moralphilosophie*, Vol. II, 5th ed., pp. 741 sqq.—F. Kattenbusch, *Das sittliche Recht des Krieges*, Giessen 1906.—M. Cronin, *The Science of Ethics*, Vol. II, pp. 663 sqq.—Jos. Rickaby, S.J., *Moral Philosophy*, pp. 191 sqq.—Chs. Macksey, S.J., art. "War" in the *Catholic Encyclopedia*, Vol. XV, pp. 546–550.

25 J. E. Ross, *Christian Ethics*, pp. 436 sqq.

SECTION 4

CAPITAL PUNISHMENT

1. DEFINITION.—Capital punishment (*poena mortis, occisio malefactoris*) is the violent destruction of a human life by legitimate authority as an atonement for a grievous crime and a means for the preservation of the public order and security. The right to inflict this penalty is known as "the right of the sword" (cfr. Rom. XIII, 4). We call it the *power of life and death.*

2. MORAL ASPECTS OF CAPITAL PUNISHMENT. —Capital punishment can be justified from reason, Sacred Scripture, tradition, and from the common conviction and practice of men in all ages.[1]

a) The Old Testament not only carried capital punishment in its penal code, but expressly prescribed it for certain crimes, according to the

1 J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 404: *"Licet malefactores publica auctoritate occidere. Ratio est, quia Deus necessario dedit hanc potestatem auctoritati publicae tamquam medium necessarium ad existentiam et commune bonum civilis societatis defendendum et procurandum, quod plerumque nonnisi morte scelestorum hominum obtineri potest. Constat etiam ex praxi cuisvis legislationis, ex Sacra Scriptura et ex universali omnium gentium consensu,"*

divine command to Noë: "Whosoever shall shed man's blood, his blood shall be shed." [2]

Although the judiciary laws of the Old Testament are abolished under the New, capital punishment has not been done away with. On the contrary, Christ Himself expressly admits the right of public authority to put criminals to death [3] and St. Paul not only declared that he would not refuse to die if he had "committed anything worthy of death," [4] but that the evildoer has every reason to fear public authority, because it is "God's minister, an avenger to execute wrath upon him that doth evil." [5] The public authority, therefore, has power over life and death, *i. e.,* the right to inflict the death penalty (*gladii ius et potestas*). This right, of course, entails a corresponding duty. The context of Rom. XIII, 4, which we have just quoted, shows that the Apostle not merely had in view some definite or concrete State or political system, but that he wished to describe the ideal Christian regimen. Consequently, the power of life and death flows from the very nature of public authority. Had Christ wished to forbid capital punishment in opposition to the Mosaic law, He would no doubt have formulated this prohibition in express terms. In reality the New

2 Gen. IX, 6; cfr. Ex. XXI, 12, 14, 23; Lev. XX, 1 sqq.; XXIV, 17, 21; Deut. XVII, 6; XIX, 11.
3 John XIX, 10 sq.
4 Acts XXV, 11.
5 Rom. XIII, 4.

Testament presupposes the death penalty as an integral constituent of the penal law.[6]

From the undeniable fact that Divine Revelation teaches the lawfulness of capital punishment, it does not, however, follow, as the Calvinists and Puritans contend, that the public authority is strictly bound to inflict this penalty as the morally necessary and solely admissible atonement for certain heinous crimes, *e. g.,* murder. For, in the first place, the Old Testament palliated the severity of the law by admitting the right of asylum, and substituted exile for death in the case of the first murderer (Cain), merely demanding that he be expelled from the society of men.[7] Secondly, the idea that an angry God is pacified by the execution of a criminal is not Biblical, but pagan, and incompatible with the Christian dogma that through the blood of "the one mediator of God and men, the man Christ Jesus, who gave himself a redemption for all," [8] the sins of the whole human race have been wiped out and all men have been redeemed. Divine Revelation, therefore, and in particular the religion of Jesus, while it acknowledges the right of the State to inflict capital punishment, does not demand its infliction. For this reason the Church used to recommend condemned criminals to the mercy of the king; for the same reason she inflicts canonical irregularity upon those who cooperate in the infliction of the death sentence. As the old saying is: *"Ecclesia non sitit sanguinem,"* that is, the Church does not represent the principle of strict justice, but rather of charity and mercy.

6 Matt. XXVII, 22 sq., 26, 35; Luke XIX, 27.

7 Gen. IV, 16 sqq.

8 1 Tim. II, 2, 5 sq.; cfr. Rom. III, 24 sq.; Eph. I, 7.

b) Ecclesiastical tradition definitely teaches that neither the infliction nor the execution of the death penalty violates the fifth commandment of the Decalogue. The contrary view of the Waldensians and the Anabaptists, that capital punishment is forbidden by divine law, is rejected by Catholic theologians as contrary to the spirit of the Church.[9]

The strict canonical precept forbidding clerics to co-operate in the application of the death penalty and inflicting irregularity upon all who co-operate in the administration of capital punishment, does not prove that the Church denies the right of the State to inflict this punishment, but is merely a logical deduction from her exalted conception of the clerical profession.[10]

9 *Professio Fidei praescripta Waldensibus ab Innocentio III: "De potestate saeculari asserimus, quod sine peccato mortali potest iudicium sanguinis exercere, dummodo ad inferendam vindictam non odio, sed iudicio, non incaute, sed consulte procedat."* (Denzinger-Bannwart, n. 425).—Cfr. St. Augustine, *Serm.*, 13 (*al.* 94, *De Temp.*), n. 8: *"Si sic audis proximum tuum, quomodo audis et te, peccata persequeris, non peccantem; et si forte quisquam durus est ad corrigenda peccata aversus a timore Dei, hoc ipsum in eo persequeris, hoc ipsum corrigere conaberis, hoc perdere et tollere laborabis, ut servetur homo peccato damnato. Duo enim nomina sunt, homo et peccator: hominem Deus fecit, peccatorem se ipse homo fecit: pereat quod fecit homo, liberetur quod fecit Deus. Noli ergo usque ad mortem, ne quum persequeris peccatum, perdas hominem. Noli usque ad mortem, ut sit, quem poeniteat: homo non necetur, ut si qui emendetur. Hanc in corde retinens homo in homines dilectionem, esto iudex terrae et ama terrere, sed dilige. Si superbis, superbi in peccata, non in hominem. In illud saevi, quod tibi displicet in te, non in eum, qui factus est sicut tu. De una officina existis, unum artificem habuistis, unus limus est vestra materies. Quid perdis non amando quem iudicas? Quoniam iustitiam perdis, [perdis] non amando quem iudicas. Adhibeantur poenae, non recuso, non interdico, sed animo amantis, animo diligentis, animo corrigentis."* (Migne, *Patr. Lat.*, XXXVIII, 110).

10 *C. I. C.*, Can. 138; P. Augustine, O. S. B., *Commentary on the New Code*, Vol. II, p. 87.

c) The teaching of the Church on this head is confirmed by the *consensus gentium.* Surely men would not have so willingly admitted the right of their rulers to deprive them of their most precious possession, *i. e.*, life, for certain grievous crimes committed against the public order, had not this right been universally regarded as a corollary of the natural law and a postulate of right reason. In matter of fact all nations have always admitted the right of the State to inflict capital punishment, and wherever rulers or public opinion were by specious arguments induced to restrict it, the people soon demanded its restoration. The fact that certain classes of persons (*e. g.*, soldiers) and certain conditions (for instance, a state of war) have always been excepted when laws were passed to abolish capital punishment, proves that the public authorities wished to reserve to themselves the right of inflicting the death penalty in circumstances under which it appeared to them necessary.

d) Philosophically, the right of the State to inflict capital punishment can be demonstrated by both juridical and sociological arguments. Not everything, however, that has been brought forward by writers on the subject is entirely convincing. To prove the intrinsic justifiability or the necessity of capital punishment from the notion and purpose of punishment in general, or

to base it upon reasons of social utility, is beside the point. For, in the first place, all the essential objects of punishment can be attained just as well by other methods; nay, the infliction of the death penalty may frustrate the true purpose of punishment without in the least repairing the injury done. The arguments taken from sociology, namely, that, on the one hand, a murderer has forfeited his human dignity and rights by his crime and must consequently be cast out as a worthless member of society, and that, on the other hand, society must be protected against dangerous or injurious members, really presuppose capital punishment as the sole means for obtaining the ends in question, and therefore involve a *petitio principii.*

The right of the State to inflict capital punishment can be convincingly proved only from its right of self-defense. As a State or community may be threatened in its material and ideal existence by enemies from without, so also by enemies from within,—those who attack discipline or, worse still, commit violence or crime and thereby undermine the very foundations of the social order. Against these,—radical Socialists, anarchists, Bolsheviki, or whatever else they may be called,—the authorities frequently have no other effective means of preserving or restoring law and order and securing peace, than capital punishment.

"Another kind of slaying," says the Catechism of the Council of Trent, "is permitted, which belongs to those

magistrates to whom is given the power of condemning to death, by the legal and judicial use of which they punish guilty and protect innocent men [Rom. xiii, 4]; in which function, provided they act justly, they are not only not guilty of murder, but eminently obey this law which prohibits murder; for as the proposed end of this law is to provide for the life and safety of men, to the same end also tend the punishments inflicted by magistrates, who are the legitimate avengers of crimes, giving security to life by punishing and thus repressing audacity and outrage. Wherefore David says: 'In the morning I put to death all the wicked of the land, that I might cut off all the workers of iniquity from the city of the Lord.'" [11]

"Every part [of an organism]," says St. Thomas, "is directed to the whole, as imperfect to perfect, and therefore every part is naturally for the sake of the whole. For this reason we observe that if the health of the whole body demands the excision of a member, on account of its being decayed or infectious to the other members, it is both praiseworthy and advantageous to have it cut away. Now every individual person is to the whole community as a part to the whole. Therefore, if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed, in order to safeguard the common good. . . ." [12]

11 *Cat. Rom.*, P. III, c. 6, qu. 4.

12 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 64, art. 2: *"Omnis pars ordinatur ad totum ut imperfectum ad perfectum, et ideo omnis pars naturaliter est propter totum. Et propter hoc videmus, quod si saluti totius corporis humani expediat praecisio alicuius membri, puta quum est putridum vel corruptivum aliorum membrorum, laudabiliter et salubriter abscinditur. Quaelibet autem persona singularis comparatur ad totam communitatem sicut pars ad totum. Et ideo, si aliquis homo sit periculosus communitati et corruptivus ipsius propter aliquod peccatum, laudabiliter et salubriter occiditur, ut bonum commune conservetur."*—*Ibid.*, ad 1: *"Quando ex occisione malorum non imminet periculum bonis, sed magis tutela et*

Capital punishment, therefore, like war, is the exercise of a nation's right of self-defense against the danger arising to its very life from putrid or infectious members, which threaten to infect and corrupt others and thereby imperil the very existence of the State.[13] Whenever there is need of exercising this right of self-defense, when capital punishment has been established by law for certain grievous crimes, the magistrates exercising the proper authority are permitted, nay, obliged to put malefactors to death.[14] If society is not in a state of necessary self-defense against internal enemies and the dangerous elements can be rendered innocuous by other means, such as incarceration, banishment, or deportation, or if certain crimes do not imperil law and order and public peace, the death penalty should not be inflicted. A temporary abolition of capital punishment may be morally justified. Even where capital punishment is legal, it need not be inflicted in every case; for it is but a relative law, and as such involves no absolute obligation. In matter of fact the supreme representative or bearer of civil authority has at all times in the world's history exercised the *right to*

salus, tunc licite possunt mali occidi."

13 *Ibid.*, art. 3. *"Occidere malefactorem licitum est, inquantum ordinatur ad salutem totius communitatis."*

14 *Ibid.*, art. 7: *"Occidere hominem non licet nisi publica auctoritate propter bonum commune." Cfr. Contra Gent.*, l. III, c. 146, n. 3-5.

pardon condemned criminals. It goes without saying that this prerogative must be exercised prudently, lest the non-infliction of capital punishment in flagrant cases create contempt for authority.[15]

Some hold that capital punishment is a violation of the Fifth Commandment,[16] contradicts a certain dictum of the prophet Ezechiel,[17] and is incompatible with Our Lord's teaching in the parable of the wheat and the cockle.[18] But, as St. Thomas explains, "the slaying of a man is forbidden in the Decalogue [only] in so far as it bears the character of something undue, for in this sense the precept contains the very essence of justice. Human law cannot make it lawful for a man to be slain unduly. But it is not undue for evil-doers or foes of the common weal to be slain, and hence this is not contrary to the precept of the Decalogue, and such killing is no murder as forbidden by that precept." [19]

It is correct, however, to say that Christianity aims at establishing an ideal condition of society in which capital punishment could be safely dispensed with.

From the juridical standpoint the chief argument advanced against capital punishment is the possibility of its infliction upon innocent persons,—an injustice which can

15 Cfr. F. X. Linsenmann, *Moral-theol.*, p. 473; V. Cathrein, *Moral-philosophie,* Vol. II, 5th ed., pp. 675 sq.

16 See Ex. XX, 13.

17 Ez. XXXIII, 11.

18 Matt. XIII, 24–30.

19 St. Thomas, *Summa Theol.*, 1a 2ae, qu. 100, art. 8, ad 3: *"Occisio hominis prohibetur in decalogo, secundum quod habet rationem indebiti, sic enim praeceptum continet ipsam rationem iustitiae. Lex autem humana hoc concedere non potest quod licite homo indebite occidatur. Sed malefactores occidi vel hostes reipublicae, hoc non est indebitum. Unde hoc non contrariatur praecepto decalogi nec talis occisio est homicidium, quod praecepto decalogi prohibetur."*

never be repaired. It is vain to deny that cases of *"judicial murder,"* as the execution of an innocent man is called, have occurred and still occur, and that the injustice thus inflicted is in a sense irreparable.[20] But this does not disprove the lawfulness of capital punishment. For in a certain sense every punishment is "irreparable." If a man is innocently condemned to a term in the penitentiary, and later found to be innocent, the wrong cannot be undone. The argument, therefore, proves too much, because if it were valid, all punishment would have to be abolished, which is absurd. Secondly, it should be considered that if, in spite of all the safeguards with which capital punishment is surrounded by an orderly and conscientious jurisprudence, it does occasionally happen that an innocent man is put to death, there is a higher justice in the next world, and the victim of earthly injustice may, by the exercise of patience and resignation, convert the evil into good, nay, make it the means of meriting an imperishable crown.

3. The following conditions are essential for the lawful infliction of capital punishment:

a) Capital punishment may be inflicted only upon those who are a peril and a detriment to the community in which they live, and who have actually committed a grave crime with complete freedom and deliberation.

Hence society is not allowed to kill an innocent member to preserve its own existence, for ex-

20 John XIX, 6. Cfr. J. Schaber, *Mord oder Justizmord?* Zurich 1896; N. Paulus, *Ein Justizmord an vier Dominikanern,* Frankfort 1897; R. Steck, *Der Berner Jetzerprozess* (1507–1509), Bern 1902; Id., *Die Akten des Jetzerprozesses nebst dem Defensorium,* Basle 1904.

ample, to placate a tyrant threatening city or country with destruction unless an innocent person is put to death.[21]

b) The accused must, in accordance with the axiom, *"Audiatur et altera pars,"* be given an opportunity to defend himself in court, and the judge, "with an upright heart," [22] free alike from sympathy and antipathy, should pronounce sentence in conformity with the facts of the case and the law. The Lord is no respecter of persons, neither should earthly judges allow themselves to be unduly influenced.[23] "Judgment," says St. Thomas, "is an act of justice, in as much as the judge restores to the equality of justice those things which may cause an opposite inequality. Now respect of persons involves a certain inequality, in so far as something is allotted to a person out of that proportion to him in which the equality of justice consists.

21 Ex. XXIII, 7.—Saint Thomas, *Summa Theol.*, 2a 2ae, qu. 64, art. 6; St. Alphonsus de' Liguori, *Theologia Moralis*, l. III, n. 393, 398 (ed. Gaudé, I, 643, 654); J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 412: *"Nunquam licet directe innocentem occidere, sive auctoritate privata sive publica, etiam ad bonum publicum procurandum; est enim actio intrinsece mala et divina lege prohibita. Licet ob gravem causam ponere actionem in se bonam, ex qua praeter intentionem sequitur mors innocentis."—Ibid.*, n. 413: *"Non licet occidere innocentem ad satisfaciendum tyranno caput eius postulanti, etiam sub poena urbis subvertendae, immo etiamsi morti suae ille consentiret, quum dominium in propriam vitam non habeat. Probabilius tamen posset cogi, ut seipsum tyranno pro bono publico traderet."*

22 Wisd. IX, 3.

23 Prov. XVIII, 5; Ecclus. XX, 24; John VII, 50 sq.; Rom. II, 11; Eph. VI, 9; Col. III, 25; Jas. II, 1; 1 Pet. 1, 17.

Therefore, it is evident that judgment is rendered corrupt by respect of persons." [24]

An important legal maxim says that the escape of a guilty criminal is preferable to the unjust execution of an innocent man.[25]

c) A criminal condemned to death should be given ample time to make a sincere act of contrition and to employ the means of grace held out to him by the Church, particularly the sacraments of Penance and the Holy Eucharist, and this respite should be granted even when there is danger that he may be freed by force. If he obstinately refuses to receive the Sacraments within a reasonable period, this is no reason for not inflicting the punishment at the appointed time.[26]

d) The legitimate authority,—in our country the legislature,—may and shall determine which

24 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 63, art. 4: *"Iudicium est actus iustitiae, prout iudex ad aequalitatem iustitiae reducit ea quae inaequalitatem oppositam facere possunt. Personarum autem acceptio inaequalitatem quandam habet, inquantum attribuitur alicui personae aliquid praeter proportionem suam, in qua consistit aequalitas institiae. Et ideo manifestum est, quod per personarum acceptionem iudicium corrumpitur."*

25 *"Maius malum est, quod innocens pereat, quam quod reus impunitus evadat."*

26 St. Thomas, *Summa contra Gentiles*, l. III, c. 146, n. 5: *"Quod mali, quamdiu vivunt, emendari possunt, non prohibet, quin iuste possint occidi, quia periculum quod de eorum vita imminet, est maius et certius quam bonum, quod de eorum emendatione exspectatur. Habent etiam in ipso mortis articulo facultatem, ut per poenitentiam convertantur ad Deum. Quodsi adeo sunt obstinati, quod etiam in mortis articulo cor eorum a malitia non recedat, satis probabiliter aestimari potest, quod nunquam a malitia resipiscant."*

crimes are punishable by death. Positive laws on this subject, should be kept within the bounds set by the moral law for the infliction of this supreme penalty. No government can renounce the right of inflicting capital punishment. Its abolition by law only makes the power of inflicting it latent in the State, but does not and cannot wholly eradicate it.[27]

Some have held that only such crimes are subject to capital punishment as were expressly punishable by death under the Mosaic law.[28] But this is a mistake. Christ completely abolished the Old Law. The view just stated is opposed to the common teaching of Catholic theologians.

The question is sometimes asked: Is there no hope that, if humanity goes on improving as it has done, capital punishment will become wholly *unnecessary?* Fr. Rickaby answers that, "waiving the question of the prospect of improvement, —in a State mainly consisting of God-fearing, conscientious men, the *infliction* of capital punishment would rarely be necessary, but the *power to inflict it* could never be dispensed with. If men ever become so ideally virtuous, the right of the State to visit gross crimes with death cannot hurt them, and it will strengthen their virtue, as all human social virtue will ever need strengthening. The abiding necessity of this

27 Rickaby, *Moral Philosophy,* pp. 323, 347.

28 D. Scotus, *Comment. in Sent.,* IV, dist. 15, qu. 3, a. 2.

right of the sword is argued from the strength and frequency of the provocations to deeds of bloodshed and violence that must ever be encountered in human society. What these provocations are, how many and how strong, may be left to the reflection of the student who reads his newspaper, or even his novel. Not the least appalling thing about crime, atrocious crime especially, is the *example* that it gives and the *imitators* whom it begets. It is not merely that it sets the perpetrator himself on the downward path, so that, unless detected and punished, a man's first deed of blood is rarely his last: it draws others after him by a *fatal fascination.* Like the images which the Epicureans supposed all visible objects to slough off and shed into the air around them, such phantoms and images of guilt float about a great crime, enter into the mind of the spectator and of the hearer, and there, upon slight occasion, turn to actual repetitions of the original deed. The one preventive is to append to that deed a punishment, the image of which shall also enter into the mind, strike horror, and disenchant the recipient. This is not to be done by mere banishment of the criminal, nor by his perpetual incarceration. Exile and prison—particularly in view of the humanity of a modern penitentiary—do not sufficiently strike the imagination. One sweet hour of re-

venge will often appear cheap at the price of ten years' penal servitude. There is nothing goes to the heart like death. Death is the most striking of terrors; it is also the penalty that most exactly counterpoises in the scales of justice the commission of a murderous crime. All States need this dread figure of the sword-bearer standing at the elbow of the sovereign." [29]

e) A criminal condemned to death should not be compelled to execute himself. No one is allowed to commit suicide, and no one should be compelled to do so, though, according to a more common opinion, if a criminal were by law condemned to execute capital punishment on himself, he would be allowed to do so.[30] Although the dignity of manhood is inviolable only as long as the individual respects it in himself and does not, in the words of St. Thomas, "fall, as it were, into the slavish state of beasts," [31] it nevertheless remains true that human nature must be respected even in the worst criminal, because by and through it he is still superior to the brute.[32]

29 Rickaby, *Moral Philosophy*, pp. 347 sqq.

30 See Vol. III of this *Handbook*, p. 99.

31 *Summa Theol.*, 2a 2ae, qu. 64, art. 2, ad 3: *"Homo peccando ab ordine rationis recedit et ideo decidit a dignitate humana, prout scilicet homo est naturaliter liber et propter seipsum existens et incidit quodammodo in servitutem bestiarum. . . . Et ideo quamvis hominem in sua dignitate manentem occidere sit secundum se malum, tamen hominem peccatorem occidere potest esse bonum, sicut occidere bestiam. Peior est enim malus homo quam bestia et plus nocet."*

32 St. Augustine, *Tract. in Ioa.*, I, 8, n. 8: *"Dedit tibi Deus esse super bestias, id est, meliorem esse quam bestias. Hoc naturale habes;*

Here it may not be amiss to add a few words about *lynching*. Fr. Rickaby, in the work from which we have so copiously quoted in this Section, says: "There is in every human breast a strong sense of what the learned call *lex talionis,* and children *tit for tat*. 'If a man has done to him what he has done to others, that is the straight course of justice'; so says the canon of Rhadamanthus, quoted by Aristotle.[33] We have argued the fundamental correctness of this rule.[34] It appears in the divine direction given to Noë: 'Whoso sheddeth a man's blood, his blood shall be shed.' [35] It appears in that popular sentiment, which in some parts of America displays itself in the lynching of murderers, who have unduly escaped the hands of the law; and which, under a similar paralysis of law in Corsica, broke out in blood-feuds, whereby the nearest relative of the deceased went about to slay the murderer. Such taking of justice into private hands is morally unlawful. . . . It is a violent outburst of natural and reasonable sentiment deprived of its legitimate vent." [36]

Fr. Ross, who lives and teaches in the South,

semper melior eris, quam bestia." (Migne, *P. L.,* XXXV, 2040).— Idem, *Serm.,* 255 (*al.* 1 *De Diversis*), n. 3: *"Utrique* [*boni et mali*] *homines sunt. Omni pecore melior est et malus homo."* (*P. L.,* XXXVIII, 1187).

33 *Eth.,* V, v, 3.

34 Rickaby, *Moral Phil.,* p. 169.

35 Gen. IX, 6.

36 Rickaby, *Moral Philosophy,* pp. 346 sq.

thinks that if the regular procedure of the law is so slow that its deterrent effect is lost, and the whole community, including the sober-minded and conservative, feel that swift punishment is necessary to protect society against indefinite repetition of such acts, then the community may act directly, for the reason that the law derives its authority from the community. But he admits that this theory "is open to such grave abuses, there is so much danger of acting through passion without sufficient evidence, and the multiplication of lynching in itself constitutes such a serious menace to the peace of the community, that it should be used only as a last resort." Hence "whatever may be the theory by which it can be allowed abstractly, the moralist will be very slow to sanction lynching in the concrete." [37]

READINGS.—St. Thomas, *Summa Theologica*, 2a 2ae, qu. 64, art. 2.—Sporer-Bierbaum, *Theologia Moralis*, Vol. II, 2nd ed., pp. 243–255.—V. Cathrein, S.J., *Moralphilosophie*, Vol. II, 5th ed., pp. 677 sqq.—H. Noldin, S.J., *Summa Theol. Mor.*, Vol. II, pp. 353 sqq.—J. Rickaby, S.J., *Moral Philosophy*, pp. 343–350.—J. W. Willis, art. "Punishment, Capital" in the *Catholic Encyclopedia*, Vol. XII, pp. 365–369 (with bibliography).

[37] *Christian Ethics*, pp. 409 sq.

SECTION 5

MAN'S RIGHT TO THE NECESSITIES OF LIFE

1. THE RIGHT TO EXISTENCE.—The goods of the earth are destined for the support and maintenance of the whole human race, and hence every man has a right, based upon the law of nature, to lead an existence worthy of a human being. But since in matter of fact some members of society are deprived of the necessaries of life by misfortune, by unjust social conditions, by insufficient earnings, by unemployment, by disease, by weakness, or by old age, Moral Theology teaches that these persons possess a right or claim to receive from others the necessary means of sustenance.

This undeniable right is circumscribed by certain definite limits, which shall now be briefly explained.

a) The right to be aided by others belongs only to those who are poor and needy because unable to make a living, not to those who are in want simply because they will not work, for St. Paul says, "if any man will not work, neither

let him eat." [1] Consequently only he who is unable to make a living has a claim to the aid of his fellowmen, individually as well as collectively.

b) This right extends only to what is absolutely necessary for a man to live like a human being, and does not entitle him to an equal share in the goods and luxuries of this world.[2]

c) The duty of supplying the necessaries of life to the needy does not directly bind every individual, but society as a whole, in particular those of its organs designated for this purpose. Only in case of extreme necessity may the claim be enforced against individuals, under two conditions, *viz.*: (1) That only so much is taken as is necessary to preserve life, etc., (2) that the one from whom it is taken be not reduced to the *same* extreme necessity. The proposition: "It is allowable to steal not only in extreme, but likewise in grave necessity," has been condemned by Innocent XI.[3]

1 2 Thess. III, 10 sqq.—On the *duty of labor* see Vol. III of this *Handbook*, pp. 124 sqq.

2 Acts IV, 35; 2 Cor. VIII, 14.

3 Gury, *Comp. Theol. Mor.*, Vol. I, n. 204: "1. *In extrema necessitate proximo succurrendum est etiam ex bonis statui simpliciter necessariis. Sic enim exigit rectus caritatis ordo, quum vita proximi praevalere debeat bono nostro longe inferiori; 2. In gravi necessitate succurrendum est proximo ex bonis aliquo modo statui necessariis seu cum modico status detrimento ex eadem ratione; 3. In communi necessitate proximo succurrendum est ex bonis statui superfluis, etiam cum aliqua voluptatum privatione, quia sublata obligatione in divitibus iam pauperes vivere non possent.*" —*Ibid.*, n. 600: "1. *Homo potest in extrema necessitate uti bonis alienis, quantum satis est ad se liberandum a tali necessitate. Ratio est, quia divisio bonorum, quocunque modo fuerit facta, non potest derogare iuri naturali, quod cuique competit, sibi providendi, dum extrema necessitate laborat; 2. Ut quis aliena*

d) The right of which we are speaking is lost by him who grievously violates his duties to society, be it in a negative way by extravagance, criminal carelessness, habitual drunkenness, sloth, etc., or positively by the commission of some gross crime. Of course, the absolute necessities of life may not be denied even to the evil-doer, so long as he has not forfeited life itself.

For the rest, it is incredible on how little a man can support himself and how happy he can be if he seeks contentment within himself, or, better still, in God.

2. The Right to Work.—Lately it has been contended that all men have a claim to an equal share in the goods of this world. This demand has been clothed in the formula: Every man has a right to work. Experience teaches that there are always unemployed persons who would gladly work if they were given an opportunity and who could answer the question: "Why stand you here idle?" by truthfully saying: "Because no man hired us." [4] Unemployment, which has been particularly wide-spread and serious since the World War, is a frequently recurring social

surripere possit, non sufficit gravis nec a fortiori communis necessitas, quia secus domini forent rationabiliter inviti et facilis direptionibus aditus pateret. Hinc damnata est ab Innocentio XI propositio sequens sub n. 36: Permissum est furari non solum in extrema necessitate, sed etiam in gravi." (Denzinger-Bannwart, n. 1186).

4 Matt. XX, 1–7.—Cfr. F. Meffert, *Arbeiterfrage und Sozialismus*, Mayence 1901, pp. 11 sqq.

symptom and has its principal causes in the multiplication of machinery, the drift of population from country to city, the undue increase of female laborers, and certain defects inherent in the capitalistic system under which we live. The "right to labor" was acknowledged in the Catholic Middle Ages when the guilds limited the number of manufacturers and merchants and protected them against competition.

"Every man," says a recent Catholic writer, "has a right as well as a duty to some sort of useful employment: it is a condition of an honorable human existence. But in the case of the worker whose only honorable means of subsistence depends upon marketable labor, the rightful claim to employment and security against unemployment has a specific significance. But his ethical right in this matter of security is further derived from the fact that without a reasonable certainty of being able to maintain himself and those dependent on him, the anxiety about merely material things must take away his due liberty in the cultivation of his mental and spiritual interests. A normal healthy cultivation of mind and soul can with difficulty be achieved without a reasonable security against material want.

"Indeed, there can be hardly any question as to the moral right underlying the worker's claim to *security against unemployment*. Less clear, perhaps, is the determination as to the incidence of the obligation to provide such security. There are those who would put the entire obligation upon the State; others would share the obligation between the State and the employer. But to

put the entire obligation on the State is to assume a sphere of activity and responsibility on the part of the State towards the individual, which logically leads to Paternalism. The wider the responsibility taken over by the State in the ordering of the individual's life, the less individual liberty there will be. In a free community ethical responsibilities must fall in the first place upon the individuals concerned, and only secondarily upon the State as the protector of the rights of the community and of the freedom of individuals. Doubtless in a matter which affects the general well-being of the community so vitally as does the labor problem, the State must necessarily intervene very largely, especially during a transitional period. That necessity of State intervention, however, will be less in proportion as employers of labor regard security against unemployment not merely as a matter of national expediency, but as a principle of inherent justice in the status of the worker which directly enters into the moral character of the contract between employer and worker.

"The worker, dependent as he is upon his work, has a moral claim to security against unemployment, and that claim must enter into the contract between himself and his employer. . . . *Arbitrary dismissal,* which takes into consideration merely the convenience or advantage of the employer without consideration for the well-being of the worker, is thus a real injustice. We are, of course, assuming that the worker is fulfilling his part of the 'national bargain' by honestly discharging the duties he has undertaken; as otherwise he himself has broken his contract and has forfeited his claim upon the employer. Cases may indeed arise in which, through no fault of his own, the worker may be incapable of continuing in the service of the employer through a change of conditions

which are of general advantage, as well as to the employer's interest: as, for instance, when new machinery or methods of higher scientific value are introduced into a manufactory. Yet in such cases there can be no doubt that the employer is under an obligation to do what he can to secure new employment to the honest worker; he cannot, without a violation of justice, dismiss him with no regard for the future: just because in the worker he is dealing with a human life and not with a mere tool.

"But if this is true, then the worker has surely a right to take due measures that his just claim shall be safeguarded against the employer's arbitrary decision and, if need be, to invoke the intervention of the State. . . . At the same time the duty of safeguarding the worker against unemployment does not rest with the employer alone. The worker himself has his coördinate share in the responsibility. Everyone will admit that no employer is obliged to keep in employment an idle or dishonest worker: nor can any individual employer be justly forced to employ or to retain in employment the inefficient who is incapable of earning his wage, at least when the incapability is not brought about by the employer's own act. These limitations of the employer's responsibility point to a corresponding duty on the part of the worker and of those upon whom the worker is naturally dependent. It is at once clear that if the worker has an ethical right to employment, he has a duty to fit himself for employment and to do what in him lies to justify his claim to be employed. Not only must he be honest and willing to work: he must also do his part in fitting himself for the work demanded of him by the needs of the community. This is a duty he owes at once to himself and to the community at large: he owes it to himself since work is an essential necessity in his life; he owes it to the com-

munity, since otherwise he runs the risk of becoming a mere burden upon his fellow-men, and of fulfilling no useful part in the life of the community upon which he must ultimately fall back for his maintenance." [5]

The right to work is not treated by St. Thomas and the older moralists, because it was purely hypothetical in their time. Even for St. Alphonsus de' Liguori it was not a practical question. Father Noldin deals with the subject in his usual clear and trenchant fashion. "Every man," he says, "has a right to work, that is, he has a right by just means to seek labor which is lawful for him and to perform that labor, and hence he has a right to demand that others shall not hinder him in the exercise of this right. This right is founded in another right, namely, that of preserving and perfecting life, to which economic labor is ordinarily necessary." [6] His qualification: "No one has a right to work, that is, to demand that some one else (whether a private individual or the State) should offer or procure him work, even though he be in need of the necessaries of life," really means nothing more, as Fr. Ross shows, than that the laborer has not a strict right in commutative justice. "In the same way," says the last-mentioned author, "the right of property is opposed to the obligation of actually giving one's possessions to another; yet all theologians agree that a person in extremest need has a right to take what he needs, and that the possessor has *a duty in charity to give*. To prevent the disorders that would result from asserting these rights, however, there is a duty of legal justice incumbent upon the State to furnish work to such as cannot otherwise find it.[7] When a government allows

5 Fr. Cuthbert, O. S. F. C., *The Ethics of Labor*, N. Y. 1922, pp. 11-14.

6 *Summa Theol. Mor.*, Vol. II, 13th ed., pp. 83 sq.

7 Noldin admits this when the

such a private appropriation of property as to close all opportunity of employment to any large class, it becomes responsible for affording to each man some reasonable return for the opportunities that would otherwise be his." [8]

The *State's duties* with regard to the *employable,* according to Fr. Ross, are briefly these: (a) It should aim at co-ordinating industries so that the workers can move from one to another without unnecessary loss of time; (b) It should establish employment bureaus and co-ordinate them; (c) It should provide vocational education and vocational guidance and co-ordinate seasonal occupations; (d) It should provide unemployment insurance.[9]

The *unemployable* Fr. Ross divides into two classes: the capable and the incapable. For the self-respecting, capable unemployed, work should be created. Just what that work should be—constructing roads, draining swamps, dredging rivers—is a question of detail. The municipality, the State, and the national government should each share in the responsibility. The incapable, *i. e.,* mentally or morally defective, who cannot be employed in the industrial world, should be taken care of in public institutions that make for character building. The State should provide special institutions where such persons can be employed up to their full capacity, whatever that may be. Most of them could be made at least partially self-supporting. The others will be a charge on public charity. Here the aid of religion and religious should be enlisted, for the problem is one that requires all the forces available for its solution.

number of unemployed is so great as to endanger the good of the community. (*Ibid.,* p. 84).

[8] J. E. Ross, C.S.P., *The Right to Work,* N. Y. 1917, pp. 32 sqq.

[9] On vocational training see J. A. Ryan, *Social Reconstruction,* N. Y. 1920, pp. 111 sqq.

So much for the duties of the State. The *individual* has no direct duty to furnish work for the unemployed. But is he therefore entirely absolved from all obligation? Fr. Ross thinks not. "Perhaps in a rigid autocracy," he says, "the individual citizen may salve his conscience by throwing all the odium upon the government. But in a republic matters are different. No such Pilate-washing of the hands will absolve the voters. For the State will act as the voters dictate, and each one can say, 'I am the State.' He is not the whole State, but he is a part of it, and to that extent becomes responsible for the State's action. Of course, each citizen is not the equal of every other. While no one has more than one direct vote, some have more influence and power than others. In proportion to this power will he be judged. In private conversation, with tongue or pen, or in any other way possible to him, he must endeavor to bring about the fulfilment of this duty to the unemployed. A perpetual passing of the duty will get us nowhere. Each man is his brother's keeper, and the duty of the keeping cannot be shifted to the world at large. Unemployment is sapping the strength and undermining the efficiency of several millions of our citizens. Mere individual efforts at finding employment or dispensing charity are futile. . . . Even State activity in the form of insurance and employment bureaus will never really get down to the root of the matter. There must be national provision of the opportunity to work. And in this action of the nation we must share. Each in his own measure must help on the formation of the public opinion necessary for such action, so that some day there will be no men standing here all the day idle because no man hath hired them." [10]

10 Ross, *The Right to Work*, 103 sqq.—On different systems of insurance against unemployment, see J. A. Ryan, *Social Reconstruction*, pp. 90 sqq.

READINGS.—H. Pesch, S.J., *Lehrbuch der Nationalökonomie,* Vol. I, 2nd ed., Freiburg i. B. 1914, pp. 9 sqq., 313 sqq.—G. von Hertling, *Kleine Schriften,* pp. 313 sqq., 328 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 482 sqq.—Fr. Cuthbert, O.S.F.C., *The Ethics of Labor,* N. Y. 1922.—J. E. Ross, C.S.P., *The Right to Work,* N. Y. 1917—H. Noldin, S.J., *Summa Theol. Mor.,* Vol. II, pp. 83 sq.—J. E. Ross, C.S.P., *Christian Ethics,* pp. 328 sqq.—H. Parkinson, *A Primer of Social Science,* pp. 92, 250 sqq. London 1913.

SECTION 6

THE DUTY OF GIVING ALMS

1. In speaking of alms in this Section we mean corporal almsdeeds. St. Thomas enumerates seven of these, namely: (1) to feed the hungry, (2) to give drink to the thirsty, (3) to clothe the naked, (4) to harbor the homeless, (5) to visit the sick, (6) to ransom the captive, and (7) to bury the dead. This division is based upon the various needs of men.[1]

That almsgiving is of precept the Angelic Doctor proves as follows: "As love of our neighbor is a matter of precept, whatever is a necessary condition to the love of our neighbor is a matter of precept also. Now the love of our neighbor requires that not only should we be our neighbor's well-wishers, but also his well-doers, according to 1 John III, 18: 'Let us not love in word, nor in tongue, but in deed, and in truth.' Now in order

1 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 32, art. 2: *"Ponuntur septem eleemosynae corporales, scil.: pascere esurientem, potare sitientem, vestire nudum, recolligere hospitem, visitare infirmum, redimere captivum et sepelire mortuum, quae in hoc versu continentur: Visito, poto, cibo, redimo, tego, colligo, condo."*—Cfr. Franz, *Drei deutsche Minoritenprediger*, p. 30: *"Colligo, poto, cibo, redimo, tego, visito, condo."*

to be a person's well-wisher and well-doer, we ought to succor his needs, and this is done by almsgiving. Therefore almsgiving is a matter of precept." [2]

Holy Scripture not only recommends almsgiving as "an acceptable sacrifice pleasing to God," [3] as a "religion clean and undefiled," [4] but emphatically stresses the duty of the rich to succor the poor.[5] St. Paul traces this obligation to the teaching of Christ,[6] who declared that all men will be judged according to the way in which they have performed the corporal works of mercy and that neglect of these works will entail eternal damnation.[7]

To succor the needy is a duty of justice which man owes to God because He is the Father of all men and the proprietor of all temporal goods, whereas man is merely His steward. It is furthermore a duty of charity, because all men are brothers and children of God.[8] "If you give to a poor man," says St. Ambrose, "you do not share

2 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 32, art. 5: *"Quum dilectio proximi sit in praecepto, necesse est omnia illa cadere sub praecepto, sine quibus dilectio proximi non conservatur. Ad dilectionem autem proximi pertinet, ut proximo non solum velimus bonum, sed etiam operemur* (1 Io. iii, 18). *Ad hoc autem quod velimus et operemur bonum alicuius, requiritur quod eius necessitati subveniamus, quod fit per eleemosynarum largitionem, et ideo eleemosynarum largitio est in praecepto."*

3 Phil. IV, 18; Heb. XIII, 16.

4 Jas. I, 27.

5 2 Cor. VIII, 14 sq.; 1 Tim. VI, 17–19.

6 2 Cor. IX, 13; cfr. Jas. II, 13; 1 Tim. V, 10; Tob. I, 20 sq.; IV, 17; XII, 12; 2 Kings II, 5.

7 Matt. XXV, 34–46.

8 Mal. II, 10; John XV, 12; 1 John III, 17 sq.

with him what belongs to you, but return to him what is his. For you have usurped what was given for the common use of all." [9] And St. Gregory the Great: "When we minister some necessary things to the needy, we do not give them what is ours, but we give them back what is theirs, thus complying with an obligation of justice rather than performing a work of mercy." [10]

The enumeration of seven temporal works of mercy given above goes farther back than the Middle Ages. It occurs in the writings of Lactantius [11] and St. Augustine,[12] though the latter omits visiting the sick.

a) Whoever has an abundance of material possessions (*bona superflua statui*), that is, more than he requires to live according to his station

9 *De Nabuthe Iezrael*, c. 12, n. 53: *"Non de tuo largiris pauperi, sed de suo reddis. Quod enim commune est in omnium usum datum, tu solus usurpas. Omnium est terra, non divitum, sed pauciores qui non utuntur suo, quam qui utuntur. Debitum igitur reddis, non largiris indebitum."* (Migne, *P. L.*, XIV, 747).

10 S Greg. M., *De Cura Past.*, c. 21: *"Quum quaelibet necessaria indigentibus ministramus, sua illis reddimus, non nostra largimur, iustitiae debitum potius solvimus quam misericordiae opera implemus."* (*P.L.*, LXXVII, 87).

11 *Epitome Div. Inst.*, c. 60 (65): *"Si quis victu indiget, impertiamus, si quis nudus occurrerit, vestiamus, si quis a potentiore iniuriam sustinet, eruamus. Pateat domicilium nostrum vel peregrinis vel indigentibus tecto. Pupillis defensio, viduis tutela nostra non desit. Redimere ab hoste captivos magnum misericordiae opus est, aegros item [et] pauperes visere atque refovere. Inopes aut advenae si obierint, non patiamur insepultos iacere. Haec sunt opera, haec officia misericordiae, quae si quis obierit, verum et acceptum sacrificium Deo immolabit."* (*Corpus Script. Eccles. Lat.*, XIX, 746).

12 *De Moribus Ecclesiae Catholicae*, l. I, c. 27, n. 53 (Migne, *P. L.*, XXXII, 1333).

in life and to support those who depend upon him, is strictly bound to give alms according to his means.[13] The exact amount which each one is obliged to give cannot be determined with mathematical accuracy. We may say, broadly, that every Christian is bound to administer his temporal possessions in such a way that his abundant wealth be employed for the benefit of his needy fellowmen, and actual want thus reduced to a minimum.[14] If any man is in extreme necessity, *i. e.*, in danger of perishing for want of the necessaries of life, every one who can is bound to give him food, drink, and shelter. This duty binds not only the well-to-do, but likewise the poor, even though its fulfilment may entail actual privation.[15] The things required for one's own immediate necessities, however, need not be given up to succor others.[16]

13 1 Cor. VIII, 3, 14; IX, 8, 11; cfr. Acts XI, 29.—St. Augustine, *Enarrat. in Ps.*, 147, n. 12: *"Multa superflua habemus, si non nisi necessaria teneamus, nam si inania quaeramus, nihil sufficit. Fratres, quaerite quod sufficit operi Dei, non quod sufficit cupiditati vestrae. Cupiditas vestra non est opus Dei. Forma vestra, corpus vestrum, anima vestra, hoc totum opus Dei. Quaere quae sufficiant, et videbis quam pauca sint* (Mc 12, 42). . . . *Quaere, quantum tibi dederit [Deus], et ex eo tolle quod sufficit; cetera quae superflua iacent, aliorum sunt necessaria. Superflua divitum necessaria sunt pauperum. Res alienae possidentur, quum superflua possidentur."* (Migne, *P. L.*, XXXVII, 1922).

14 2 Cor. VIII, 14.—*Prop. damn. sub Innocentio XI*, n. 12: *"Vix in saecularibus invenies, etiam in regibus, superfluum statui. Et ita vix aliquis tenetur ad eleemosynam, quando tenetur ex superfluo statui."* (Denzinger-Bannwart, n. 1162).

15 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 32, art. 5 and 7.—*V. supra*, p. 164, note 3.

16 2 Cor. VIII, 13.—Gury, *Comp. Theol. Mor.*, Vol. I, n. 206: *"In necessitate gravi vel extrema dandum est, quantum sufficit hic et*

He who refuses or neglects to give alms according to his means, when appealed to by persons in dire need, commits a grievous sin. The duty of almsgiving binds particularly the *clergy,* because their income is derived from the possessions of the Church, which, ideally, belong to the poor.[17]

The question how large a percentage of one's income should be devoted to alms, is decided by most theologians thus: We are not obliged to give to the poor more than the fiftieth portion, or two per cent., of what we have left over after defraying the requirements of life according to our particular station in life. Göpfert justly observes that, in view of the constantly increasing inequality of fortunes and the concentration of wealth in the hands of a few under the capitalistic system, the traditional two per cent. can hardly be regarded as sufficient to-day.[18] Moreover, as Linsenmann has pointed out,

nunc ad levandam hanc necessitatem, nisi sint alii qui ipsis subvenire velint. Nemo tamen tenetur magnam pecuniae summam erogare ad pauperem a periculo mortis liberandum vel ad remedia magni pretii ei procuranda."

17 1 Tim. III, 2; Tit. I, 8 (φιλόξενος, *hospitalis*). Cfr. St. Jerome, *Epist.,* 52 (*al.* 2), n. 6: *"Gloria episcopi est, pauperum inopiae* [*opibus*] *providere. Ignominia omnium sacerdotum est, propriis studere divitiis."* (Migne, *P. L.,* XXII, 533).

18 Göpfert, *Moraltheol.,* Vol. II, 7th ed., p. 40.—On the principle of "station in life" Fr. Ross says (*Christian Ethics,* pp. 212 sq.): "According to Noldin (II, p. 104), one is not obliged to lose one's station in life in order to prolong the life of another. At first sight, this seems like a heartless doctrine. Why should not a rich banker whose station in life demands an expenditure of $10,000 a year, be obliged to help a poor laborer, even though the assistance does reduce him to the way of living of prosperous but small merchants? An analysis of the situation will show us why. If he would be obliged to, then logically those in a class below would be similarly bound, and the lowest class of self-respecting and self-supporting workmen would be so bound. This would mean, really, that no one had a right (in the face of a neighbor's need) to more than what was necessary for his own life. But if that were so,

such mathematical calculations are unsatisfactory because the notion of *superfluum, i. e.,* that portion of a man's income which he does not need to support himself and his dependents according to his station in life, is extremely variable and therefore difficult to determine.[19] "The amount of alms which each must give out of his superfluous means for the benefit of the poor," says Schindler, "cannot be determined by any rigid formula. Attempts to fix the measure of assistance a man owes to the poor either by the total amount of his income or that which he has left over after defraying his living expenses, are unsatisfactory because they disregard the object of almsgiving, which is to help make the sufferings of the poor bearable. The poor we shall always have with us, but their number and the extent of their needs differ accord-

there could be no progress among the working classes, their standard of living would always remain at the minimum. For only the recognition that, when a class has for a reasonable length of time actually attained a standard, that class has a right to this standard, makes us fix a minimum wage for an American laborer as greater than for a Chinese coolie. As far as bare existence goes, the American could probably get along on rice and fish if obliged to do so, but no minimum wage commission would ever say he had a right only to rice and fish. Yet we must admit that this principle can be abused. Extremely fashionable women, for instance, will think it necessary to spend $25,000 a year on dress in order to maintain their station. It is hard to fix a limit logically, yet limit there should be. I do not know of any better way of fixing it than by an application of the principle of *social utility.* As long as it is socially useful that there should be a station in life requiring a certain expenditure, so long is it justified. Thus a physician whose profession necessitates an office, a conveyance, a certain outlay for books, instruments, and so on; or a gentleman of leisure whose culture adds an invaluable element to a community, though at the same time it represents a certain outlay in money; these should feel no qualms of conscience because they do not give up this expenditure and with it their position in society in order to feed the hungry. In our nation, at least, the need of such sacrifices on their part indicates a social maladjustment for which they are not responsible, and which would not be remedied by these heroic methods. Mere social butterflies, however, have no justification, and they should be ruthlessly reduced—or elevated."

19 F. X. Linsenmann, *Moraltheologie,* p. 485.

ing to time and place. The larger their number and the greater their necessities, the greater will be the assistance required on the part of the wealthy. Hence it is impossible to lay down any more specific rule than: 'The greater the need, the more alms we must give.' Note that one is bound to give liberally only in case of extreme bodily necessity. In all other cases moderate almsgiving is sufficient. To oblige men to give liberally whenever and as often as they are appealed to by the poor, would be too onerous and impossible. For the same reason an individual, no matter how wealthy, is not bound to give to all the poor whom he has an opportunity to succor, but may, with due regard to the dictates of charity, help those whom he chooses, or contribute his share to public or private agencies that make it their business to alleviate want." [20]

b) Society, more particularly the State organized in conformity with the principles of the Christian religion, is in duty bound to make reasonable provision for the poor and needy of every class, the helpless sick, orphans, the mentally defective, the insane, etc., and has the right to impose taxes for public charity. Well-organized co-operation between Church and State would have these important advantages: (1) The means appropriated for charitable purposes could be more efficiently distributed and employed to better purpose; (2) It would be possible to exercise upon the poor and needy a wholesome

20 Schindler, *Lehrbuch der Moraltheol.*, Vol. II, 2 (1910), p. 449; cfr. St. Alphonsus, *Theol. Mor.*, l. II, n. 32 (ed. Gaudé, I, 328); *Homo Apost.*, tr. IV, n. 19; Gury, *Comp. Theol. Mor.*, Vol. I, n. 206.

moral influence by segregating the notoriously unworthy from the worthy and giving the slothful work instead of alms, thereby preventing idleness and vagabondage.

However, since the worthy poor often hide their needs, even a well-organized system of public charity must be supplemented by private charity, and each individual citizen is bound, with due regard to the public charity administered by Church and State, to participate in "ministering unto the saints," as St. Paul puts it, by succoring the needy to the best of his ability. We must always remember that charity is not cabined within the limits of strict justice. Add to this the consideration that, in view of the existing class hatred between rich and poor, and in view also of the immense envy, indignation, wrath, and dissatisfaction that have accumulated among the so-called "disinherited," it is, so to speak, a duty of self-preservation for the wealthy to pacify the needy by kindness and generosity, so that they do not join the radical proletariat.

2. Right reason demands that we give alms only from that which legitimately belongs to us. Hence a *wife* may, with her husband's consent, give alms from their common property, and she should do so if the husband does not give in accordance with his means; but she may not give away anything that belongs exclusively to her husband.[21] "A wife," says St. Thomas, "who has other property besides her dowry which

21 Cfr. Tob. IV, 7.—St. Augustine, *Epist.*, 262 (*al.* 199), n. 7: "*Mulierem coniugatam non licet dicere: Facio quod volo de meo, quum et ipsa non sit sua, sed capitis sui* (*Eph.* 5, 23), *hoc est viri sui.*" (Migne, *P. L.*, XXXIII, 1080).

is for the support of the burdens of marriage, whether that property be gained by her own industry or by any other lawful means, can give alms out of that property without asking her husband's permission; yet such alms should be moderate, lest through giving too much, she impoverish her husband. Otherwise she ought not to give alms without the express or presumed consent of her husband, except in cases of necessity. . . . For though the wife be her husband's equal in the marriage act, yet in matters of housekeeping the head of the woman is the man, as the Apostle says." [22]

Servants may not give away the property of their masters, nor religious the property of the institute to which they belong, without the consent of their superiors. Guardians or administrators of property belonging to others may give alms out of that property, but only to the extent to which the owner himself would or should do so.

With regard to the *manner* of giving alms note the following points:

22 St. Thomas, *Summa Theologica*, 2a 2ae, q. 32, art. 8, ad 2: *"Si uxor habet alias res praeter dotem quae ordinantur ad sustentanda onera matrimonii, vel ex proprio lucro vel quocunque alio licito modo, potest dare eleemosynas etiam irrequisito assensu viri, moderatas tamen, ne ex earum superfluitate vir depauperetur. Alias autem non debet dare eleemosynas sine consensu viri vel expresso vel praesumpto, nisi in articulo necessitatis. Quamvis enim mulier sit aequalis viro in actu matrimonii, tamen in his quae ad dispositionem domus pertinent, vir caput est mulieris."*—Cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 207. —On State philanthropy see Ross, *Christian Ethics*, pp. 216 sqq.

a) Almsgiving, like every other act of charity, must be inspired by a pure motive, *i. e.*, love of God and of one's fellowmen,[23] not by ambition, vanity, or love of ostentation, nor yet by purely natural sympathy or commiseration, and least of all by the sole desire to rid oneself of beggars and their importunities. Purity of motive does not, however, forbid publicity, for Christ Himself performed charitable works in public, and demanded of His disciples that they follow His example. What He condemned was *Pharisaic ostentation,* inspired by the desire of gaining applause and praise. The motive of the giver should be so pure that, if it were possible, the heart would remain ignorant of what the hand was doing. "When thou dost an almsdeed, sound not a trumpet before thee, as the hypocrites do in the synagogues and in the streets, that they may be honored by men. Amen I say to you, they have received their reward; but when thou dost alms, let not thy left hand know what thy right hand doth, that thy alms may be in secret, and thy Father who seeth in secret will repay thee." [24]

23 Matt. IX, 36; XIV, 14; XV, 32; XVIII, 27; Luke VI, 36; 1 Cor. XIII, 3; Jas. II, 13.

24 Matt. VI, 2 sq.; V, 16; 2 Cor. IX, 11, 13; cfr. 1 Pet. IV, 11.—St. Ambrose, *De Offic.*, l. I, c. 30, n. 147: *"Nec illa perfecta est liberalitas, si iactantiae causa magis quam misericordiae largiaris. Affectus tuus nomen imponit operi tuo; quomodo a te proficiscitur, sic aestimatur. Vides quam moralem iudicem habeas. Te consulit, quomodo opus tuum suscipiat, mentem tuam prius interrogat. 'Nesciat,' inquit, 'sinistra tua quid faciat dextera tua'* (Mt. 6, 3). *Non de corpore loquitur, sed etiam unanimus tuus, frater*

The social conditions of our day render it particularly advisable that we do not hide our good works under a bushel. Our opponents proudly parade figures, and we must meet their attacks with statistics showing the good we do, thus confuting the enemy and at the same time encouraging our own in their charitable work.

b) We must give alms voluntarily and gladly, not reluctantly and because we are commanded to do so. We must furthermore give them in a spirit of genuine charity and not so as to make the poor ashamed of themselves or hurt their feelings. No act of mercy is pleasing to God and worthy of His blessing unless it is performed for His sake, freely, lovingly, and gladly, for it is the good will of the giver and not the size of the gift that merits celestial reward. A gift exacted by force is not an alms, but a tax or tribute.[25]

The only thing by which the free will of man can be influenced without the loss of liberty, is *good example.* Our Lord Jesus Christ became poor for our sake, in order that we might become rich. By giv-

tuus quod facis, nesciat, ne dum hic mercedem quaeris iactantiae, illic remunerationis fructum amittas. Perfecta autem est liberalitas, ubi silentio quis tegit opus suum et necessitatibus singulorum occulte subvenit: quem laudat os pauperis et non labia sua." (Migne, *P. L.*, XVI, 66).

25 Ecclus. XVIII, 15–18; 2 Cor. VIII, 2, 8, 11 sq.; IX, 7; cfr. Mark XII, 42 sqq.—St. Augustine, *De Offic.*, l. I, c. 30, n. 143: *"Non satis est bene velle, sed etiam bene facere, nec satis est iterum bene facere, nisi id ex bono fonte, id est, bona voluntate proficiscatur: Hilarem enim datorem diligit Deus* (2 Cor. ix, 7). *Nam si invitus facias, quae tibi merces est?"* (Migne, *P. L.*, XVI, 65).

ing alms to the poor we honor Him who commanded us to be charitable for His sake.[26]

c) Private as well as public almsgiving should be guided by a *prudent economy,* so that it may accomplish its object as effectively as possible. This is but another way of saying that alms should not be given haphazard, but with due regard to the needs of the poor and the fitness of the gifts distributed.[27]

The first rule is to give promptly, when the needy person can still be benefitted, for "he gives twice who gives quickly."

The second rule is to give to the poor according to their actual wants,—much to him who needs much, little to him who needs but little,—food, clothing, or money according to what is most ur-

26 Matt. X, 42; XXV, 40; 2 Cor. VIII, 8 sq.; cfr. Ps. XL, 2.

27 St. Ambrose, *De Offic.,* l. I, c. 30, n. 144: *"Pulchrum est, bene velle et eo largiri consilio, ut prosis, non ut noceas. Nam si luxurioso ad luxuriae effusionem, adultero ad mercedem adulterii largiendum putes, non est beneficientia ista, ubi nulla est benevolentia. Officere enim istud est, non prodesse alteri, si largiaris ei, qui conspiret adversus patriam, qui congregare cupiat tuo sumptu perditos, qui impugnent Ecclesiam. Non est haec probabilis liberalitas, si adiuves eum, qui adversus viduam et pupillos gravi decernit iurgio aut vi aliqua possessionis eorum eripere conatur."* (*P. L.,* XVI, 65).—*Ibid.,* n. 149: *"Affectus divitem collationem aut pauperem facit et pretium rebus imponit. Ceterum Deus non vult simul effundi opes, sed dispensari."* (*P. L.,* XVI, 67).—St. Jerome, *Epist.,* 58 (*al.* 13), n. 7: *"Iam non sunt tua, quae possides, sed dispensatio tibi credita est. Memento Ananiae et Sapphirae. Illi sua timide servaverunt; tu considera, ne Christi substantiam imprudenter effundas, id est, ne immoderato iudicio rem pauperum tribuas non pauperibus."* (*P. L.,* XXII, 584).—Seneca, *De Benefic.,* l. II, c. 16: *"Habeatur personarum ac dignitatum proportio; et quum sit ubique virtutis modus, aeque peccat, quod excedit, quam quod deficit."*

gently required, and always with a view to relieve the spiritual wants of the poor together with their material necessities.[28] Quite often the most effective method of relief consists in procuring work for the unemployed, either directly or through public or private bureaus or agencies.

Christian charity, be it further noted, comprises all men without exception, as God has mercy on all and "maketh his sun to rise upon the good and bad, and raineth upon the just and the unjust." [29] Yet it is not only licit, but advisable, to observe some sort of order in giving alms. Those who are most in need have the first claim upon our charity, and among them parents, children, relatives, friends, and those "who are of the household of the faith should be given preference." [30] We may also make a distinction between those who are in need without their own fault, and those who suffer the penalty of sloth or negligence, so that the latter may be reminded

28 Prov. III, 28; Ecclus. IV, 3; Jas. II, 13 sqq.—St. Ambrose, *De Offic.*, l. I, c. 30, n. 149: *"Personarum quidem Deus acceptor non est, quia novit omnia. Nos autem omnibus quidem debemus misericordiam, sed quia plerique fraude eam quaerunt et affingunt aerumnam, ideo ubi causa manifestatur, persona cognoscitur, tempus urget, largius se debet profundere misericordia."* (Migne, *P. L.*, XVI, 66). —*Ibid., L.*, n. 158: *"Consideranda etiam in largiendo aetas atque debilitas, nonnunquam etiam verecundia, quae ingenuos prodit natales, ut senibus plus largiaris, qui sibi labore iam non queunt victum quaerere. Similiter et debilitas corporis et haec iuvanda promptius. Tum si quis ex divitiis cecidit in egestatem, et maxime si non vitio suo, sed aut latrociniis aut proscriptione aut calumniis, quae habebat, amisit."* (Migne, *P. L.*, XVI, 69).

29 Matt. V, 45.

30 Gal. VI, 10.

of their guilt and thus benefitted, not only materially, but also spiritually and morally.[31]

31 Gal. VI, 1–10; 2 Thess. III, 10–12.—St. Ambrose, *De Offic.*, l. I, c. 30, n. 148: *"Perfecta liberalitas fide, causa, loco, tempore commendatur, ut primum opereris circa domesticos fidei. Grandis culpa, si sciente te fidelis egeat; si scias eum sine sumptu esse, famem tolerare, aerumnam perpeti, qui praesertim egere erubescat; si in causam ceciderit aut captivitatis suorum aut calumniae, et non adiuves; si sit in carcere et poenis et suppliciis propter debitum aliquod iustus excrucietur (nam etsi omnibus debetur misericordia, tamen iusto amplius), si tempore afflictionis suae nihil a te impetret, si tempore periculi quo rapitur ad mortem, plus apud te pecunia tua valeat quam vita morituri."*—*Id., ibid.*, n. 150: *"Est etiam illa probanda liberalitas, ut proximos seminis tui non despicias, si egere cognoscas. Melius est enim, ut ipse subvenias tuis, quibus pudor est ab aliis sumptum deposcere aut alicui postulare subsidium necessitati, non tamen, ut illi ditiores eo fieri velint, quod tu potes conferre inopibus, causa enim praestat, non gratia. Neque enim propterea te Domino dicasti, ut tuos divites facias, sed ut vitam tibi perpetuam fructu boni operis acquiras et pretio miserationis peccata redimas tua. Putant se parum poscere? Pretium tuum quaerunt, vitae tuae fructum adimere contendunt et se iuste facere putant. Et accusat quod eum divitem non feceris, quum te ille velit aeternae vitae fraudare mercede."* (Migne, *P. L.*, XVI, 66, 67).—*Ibid.*, l. II, c. 16, n. 76: *"Liquet debere esse liberalitatis modum, ne fiat inutilis largitas. Sobrietas tenenda est, maxime sacerdotibus, ut non pro iactantia, sed pro iustitia dispensent. Nusquam enim maior aviditas petitionis. Veniunt validi, veniunt nullam causam nisi vagandi habentes et volunt subsidia evacuare pauperum, exanire sumptum, nec exiguo contenti maiora quaerunt ambitu vestium captantes petitionis suffragium et natalium simulatione licitantes incrementa quaestuum. His si quis facile deferat fidem, cito exhaurit pauperum alimoniis profutura compendia. Modus largiendi adsit, ut nec illi inanes recedant neque transcribatur vita pauperum in spolia fraudulentorum. Ea ergo mensura sit, ut neque humanitas deseratur nec destituatur necessitas."*—*Ibid.*, n. 77: *"Plerique simulant debita. Sit veri examen. Exutos se per latrocinia deplorant: aut iniuria fidem faciat aut cognitio personae, quo propensius iuventur. Ab ecclesia relegatis sumptus impartiendus, si desit eis alendi copia. Itaque qui modum servat, avarus nulli, sed largus omnibus est. Non enim solum aures praebere debemus audiendis precantium vocibus, sed etiam oculos considerandis necessitatibus. Plus clamat operatori bono debilitas, quam vox pauperis. Neque vero fieri potest, ut non extorqueat amplius importunitas vociferantium, sed non semper impudentiae [imprudentiae?] locus sit. Videndus est ille, qui te non videt, requirendus ille, qui erubescit videri. Ille etiam clausus in carcere occurrat tibi; ille affectus aegritudine mentem tuam personet, qui aures non potest."* (*P. L.*, XVI, 123).

It is never permitted to give alms in such a way as to encourage idleness and beggary, for sloth is the beginning of all vice, and to support the vicious would be to foment crime and work injury to those really in need.[32] Give to the innocent before you give to the guilty, but do not forget that the misery a man brings upon himself through his own fault is also a misfortune.[33]

That charity is often abused is undeniable; but this deplorable fact does not and cannot change the rule that wherever there is real need, we should hasten to give relief, regardless of whether the needy are suffering with or without their own fault. The frequently heard complaint that the poor are unworthy of assistance and ungrateful, quite often has its origin in a wrong method of almsgiving.[34] "If you wish those to whom you show favors to be thankful," says Seneca, "you must not only give, but love."[35] In our day charity has become a *sport.*

32 St. Basil, *Hom. in Ps.*, I, XIV, n. 6, (Migne, *P. G.*, XXIX, 264).

33 Cfr. St. Ambrose, *De Offic.*, l. I, c. 30, n. 159: *"Sed forte dicat aliquis: Caecus uno loco sedet et praeteritur, et iuvenis validus frequenter accipit. Et verum est, quia obrepit per importunitatem. Non est illud iudicii, sed taedii. Nam et Dominus ait in evangelio (Lc.* xi, 8) *de eo, qui iam clauserat ostium suum, si quis ostium eius pro cacius pulset, quia surgit et dat illi propter importunitatem."* (Migne, *P. L.*, XVI, 69).— Cfr. Weber, *Armenwesen und Armenfürsorge*, pp. 49 sqq.

34 Seneca, *De Benefic.*, l. I, c. 1: *"Nec mirum est, inter plurima maximaque vitia nullum esse frequentius quam ingrati animi. Id evenire ex pluribus causis video. . . . Multos experimur ingratos, plures facimus."—Ibid.*, l. II, c. 17: *"Facimus plerumque ingratos, et ut sint favemus."* (*Opera Omnia*, I, ed. I. Lipsius, Amsterdam, 1672, pp. 585, 586, 633.)

35 Seneca, *op. cit.*, l. II, c. 11: *"Si gratos vis habere quos obligas, non tantum des oportet, sed ames. Praecipue, ut dixi, parcamus auribus: admonitio taedium facit, exprobratio odium. Nihil aeque in beneficio dando vitandum est quam superbia. Quid opus arrogantia vultus? quid tumore verborum? Ipsa res te extollit. Detrahenda est*

Concerts, balls, bazaars, dances and theatrical entertainments are arranged for the ostensible purpose of helping the poor, but mainly for the sake of amusement. This sort of charity, as Ratzinger points out, does not reconcile the poor to their dour lot, but, on the contrary, embitters their minds and thus exercises a ruinous effect, instead of building up.[36] Christian charity is a sacred thing and should sanctify those on whose behalf it is exercised.[37] Entertainments and amusements held for charitable purposes, however, may serve a good end and, therefore, should not be unreservedly condemned as anti-social, much less as immoral. Amusements are not *per se* sinful, but may be ennobled by a good motive and the spirit of sacrifice. By arranging such entertainments for charitable purposes (provided they contain nothing objectionable on other grounds,) the rich show that they have a heart for the poor,[38] though it would be a mistake to think that they can acquit themselves of their duty towards the poor solely by attending "charity balls" and similar affairs.

It has been asserted[39] that the early Church encouraged, nay demanded, indiscriminate and uncritical almsgiving. This is not so. The *Didache* says: "Let thine alms sweat in thine hands until thou knowest to whom thou art giving,"[40] and this saying is quoted approvingly by St. Augustine, St. Gregory the Great, Cassiodorius, St. Bernard of Clairvaux, Abélard, Cardinal Hugh a S.

inanis iactatio: res loquantur nobis tacentibus. Non tantum ingratum, sed invisum est beneficium superbe datum." (*Ibid.*, 626).

36 Ratzinger, *Die Volkswirtschaft*, 2nd ed., pp. 477 sq.

37 Cfr. 2 Cor. IX, 5; Jas. I, 27.

38 Cfr. Gal. II, 1.

39 Harnack, *Die Mission und Ausbreitung des Christentums*, Vol. I, 2nd ed., p. 130; E. Grimm, *Die Ethik Jesu*, Hamburg 1903, p. 104.

40 *Doctr. XII Apost.*, c. 1, 6: Ἱδρωσάτω ἡ ἐλεημοσύνη σου εἰς τὰς χεῖράς σου μέχρις ἂν γνῶς, τίνι δῷς (F. X. Funk, *Patr. Apost.*, I, 2nd ed., 6, 7).

Chiara, and other theologians.[41] Not a few ecclesiastical writers expressly warn the faithful against indiscriminate and thoughtless almsgiving and admonish them to exercise prudence and pay due attention to the necessity and worthiness of those whom they succor, and to the circumstances of each case. St. Basil, for example, says that it requires considerable experience to distinguish between greedy and worthy beggars, and that while a good Christian should lend a ready ear to requests for assistance, he should, on the other hand, prudently investigate whether those who ask for help really need it.[42] St. Ambrose lays down definite rules for almsgiving, paying due consideration to age, capacity for work, position, guilt or innocence on the part of applicants.[43] St. Jerome seems to favor indiscriminate giving,[44] yet he expressly warns against foolish extravagance and praises St. Paula for prudently measuring her gifts and distributing her alms according to actual needs.[45]

41 See the quotations in Funk, *Patr. Apost.*, Vol. I, 2nd ed., p. 6.—Cfr. Foerstl, *Das Almosen*, pp. 39 sqq.; F. Schaub, *Die kath. Charitas und ihre Gegner*, M. Gladbach 1909, pp. 142 sqq.

42 *Epist.*, 150, n. 3: "Ἔλεγε γὰρ ἐμπειρίας χρήζειν τὴν διάγνωσιν τοῦ ἀληθῶς δεομένου καὶ τοῦ κατὰ πλεονεξίαν αἰτοῦντος. Καὶ ὁ μὲν τῷ θλιβομένῳ διδοὺς τῷ Κυρίῳ ἔδωκε καὶ παρ' αὐτοῦ λήψεται τὸν μισθόν· ὁ δὲ τῷ περιερχομένῳ παρασχόμενος παντὶ προσέρριψε κυνί, φορτικῶς μὲν διὰ τὴν ἀνελ-δειαν, οὐκ ἐλεεινῶς δὲ διὰ τὴν ἔνδειαν. (Migne, *P. G.* XXXII, 605); *Homil. in Ps.*, 14, n. 6: Βούλεταί σε διὰ μὲν τὴν ἀγάπην ἐν ἁπλότητι ἀνειμένον εἶναι πρὸς τοὺς αἰτοῦντας, λογισμῷ δὲ πάλιν διακρίνειν ἑκάστου τὴν χρείαν τῶν προσαι-τούντων (*P. G.*, XXIX, 263 sq.).

43 *V. supra*, p. 185, n. 27; p. 186, notes 28 and 31.

44 *In Eccle.*, c. 11: *"Ad eleemosynam cohortatur, quod omni petenti sit dandum et indiscrete faciendum bene."* (Migne, *P. L.*, XXIII, 1101).

45 *Epist.*, 58 (*al.* 13), n. 7 (*v. supra*, p. 184, note 27); *Epist.*, 108 (*al.* 27), n. 16: *"Solent pleraeque matronarum buccinatoribus suis dona conferre et in paucos largitate profusa manum a ceteris retrahere: quo illa [S. Paula] omnino carebat vitio. Ita enim singulis suam pecuniam dividebat, ut singulis necessarium erat, non ad luxuriam, sed ad necessitatem. Nemo ab ea pauperum vacuus reversus est. Quod obtinebat non divitiarum magnitudine, sed prudentia dispensandi."* (Migne, *P. L.*, XXII, 892).

The first clearly developed theory of *public poor relief* was developed by the famous Spanish humanist and pedagogue Juan Luis Vives (+ 1540), author of a famous treatise, *"De Subventione Pauperum,"* in which "he proscribes mendicancy, expels poor strangers from the city, obliges the natives to work, recommends apprenticeship for those who have no trade, advocates asylums for the insane, schools for foundlings from the age of six, and provides for the administration of all this by voluntary gifts, the sale of the products of the labor of the poor, the revenues of the hospitals, and taxes on rich ecclesiastical communities. Ypres put these ideas into practice. . . . Other cities followed this example." [46]

3. Blessings and Fruits of Almsgiving.—Regarding the matter from the purely economic point of view, it might be expected that almsgiving would diminish a man's wealth, nay, if indulged in on too large a scale, would even make him poor. But this is not the case. "Almsgiving never yet made a man poor," says an ancient proverb.[47] Holy Scripture in many passages both of the Old and the New Testament teaches that almsgiving brings down blessings upon the giver.[48] The true Catholic does not fear or

[46] *Catholic Encyclopedia,* Vol. XV, pp. 492 sq.

[47] C. F. O'Leary, *Proverbs and Proverbial Phrases,* St. Louis 1907, p. 45.

[48] Ps. XL, 2; Prov. XI, 24; XIX, 17; Eccles. XI, 1; Matt. V, 7; Luke VI, 35; Acts XX, 35.—St. Cyprian, *De Opere et Eleemosyn.,* c. 9: *"Sed vereris et metuis, ne si operari plurimum coeperis patrimonio tuo larga operatione finito ad penuriam forte redigaris. Esto in hac parte intrepidus, esto securus. Finiri non potest unde in usus Christi impenditur, unde opus coeleste celebratur."* (*Corp. Script. Eccl. Lat.,* III, Vienna 1868, P. 1, p. 380).—*Ibid.,* c. 10: *"Metuis ne patrimonium tuum forte deficiat, si operari*

worry, for he knows from Divine Revelation that God rewards every act of mercy and kindness, and that almsgiving brings not only mediate but also immediate blessings. The poor pray for their benefactors.[49] Almsgiving, moreover, belongs to the good works *par excellence* and is an *opus satisfactorium et meritorium,* by which a man can make satisfaction to God for his sins,[50]

ex eo largiter coeperis, et nescis miser, quia dum times, ne res familiaris deficiat, vita ipsa et salus deficiat, et dum, ne quid de rebus tuis minuatur, attendis, non respicis, quod ipse minuaris amator magis mamonae quam animae tuae, et dum times, ne pro te patrimonium perdas, ipse pro patrimonio pereas." (*C. S. E. L.,* III, 381).—*Ibid.,* c. 11: *"Metuis, ne patrimonium tuum forte deficiat, si operari ex eo largiter coeperis? Quando enim factum est, ut iusto possent deesse subsidia? Helias in solitudine corvis ministrantibus pascitur et Danieli in lacum (ad) leonum (praedam) iussu regis incluso prandium divinitus apparatur, et tu metuis, ne operanti et Dominum promerenti desit alimentum? . . . Volucres Deus pascit et passeribus alimenta diurna praestantur* (*Mt.* vi, 26) *et quibus nullus divinae rei sensus est, eis nec potus nec cibus deest: tu christiano, tu Dei servo, tu operibus bonis dedito, tu domino suo caro aliquid existimas defuturum? Nisi si putas quia, qui Christum pascit, a Christo ipse non pascitur aut eis terrena deerunt, quibus caelestia et divina tribuuntur?"* (*C. S. E. L.,* III, 282).—Lactantius, *Divin. Instit.,* l. VI, c. 12: *"Qui apud Deum dives est, pauper esse numquam potest."* *P. L.* XIX, 531).—St. Ambrose, *De Offic.,* l. I, c. 30, n. 151: *"Neminem debet pudere, si ex divite pauper fiat, dum largitur pauperi, quia Christus pauper factus est, quum dives esset, ut omnes sua inopia ditaret."* (Migne, *P. L.,* XVI, 67).—St. Augustine, *Enarr. in Ps.,* XLVIII, s. 1, n. 12: *"Noli timere: ponunt pueri in thesaurario et securi sunt, ponis tu in manu Christi et times? Esto prudens et prospice tibi in posterum in caelo."* (*P. L.,* XXXVI, 552).

49 Ecclus. XXIX, 15; 2 Cor. IX, 6–14.—St. Cyprian, *De Opere et Eleemosyn.,* c. 9: *"Dum gratiarum actio ad Deum pro eleemosynis atque operationibus nostris pauperum oratione dirigitur, census operantis Dei retributione cumulatur."* (*C.S. E.L.,* III, 1, 380 sq.).

50 Dan. IV, 24; Tob. IV, 11; XII, 8 sq.; Ecclus. III, 33.—Lactantius, *Divin. Instit.,* c. 13: *"Quoties rogaris, tentari te a Deo crede, an sis dignus audiri. Circumspice conscientiam tuam et quantum potes, medere vulneribus. Nec tamen quia peccata largitione tolluntur, dari tibi licentiam peccandi putes. Abolentur enim, si Deo largiare, quia peccaveris; nam si fiducia largiendi pecces, non abolentur."* (Migne, *P. L.,* VI, 684 B).—St. Augustine.

and through which he can obtain remission of temporal penalties, innumerable graces, and, finally, a merciful judgment and eternal salvation.[51] Nor does it make any difference how large or how small the alms are, for God rewards the cup of cold water given in His name, the mite of the poor widow, nay, even the good will that remains inoperative for lack of means. Thus even the poor can give alms if they but have a good will.[52] "If thou have much, give abun-

Enchir., c. 75: *"Sane qui sceleratissime vivunt nec curant talem vitam moresque corrigere et inter ipsa facinora et flagitia sua eleemosynas frequentare non cessant, frustra ideo sibi blandiuntur."*—*Ibid.*, c. 76: *"Qui vult ordinate dare eleemosynam, a se ipso debet incipere et eam sibi primum dare. Est enim eleemosyna opus misericordiae, verissimeque dictum est: Miserere animae tuae placens Deo* (*Eccli.* XXX, 24). *Propter hoc renascimur, ut Deo placeamus, cui merito displicet, quod nascendo contraximus. Haec est prima eleemosyna, quam nobis dedimus, quoniam nos ipsos miseros per miserantis Dei misericordiam requisivimus iustum iudicium eius confitentes, quo miseri effecti sumus."* *Ibid.*, c. 77: *"Non ergo se fallant, qui per eleemosynas quaslibet largissimas fructuum suorum vel cuiuscunque pecuniae impunitatem se emere existimant in facinorum immanitate ac flagitiorum nequitia permanendi. Non solum enim haec faciunt, sed ita diligunt, ut in eis semper optent, tantum si possint impune, versari. Qui autem diligit iniquitatem, odit animam suam* (*Ps.* X, 6), *et qui odit animam suam, non est in eam misericors, sed crudelis; diligendo eam quippe secundum saeculum odit eam secundum Deum. Si ergo vellet ei dare eleemosynam, per quam illi essent munda omnia* (*Lc.* 11, 41), *odisset eam secundum saeculum et diligeret secundum Deum."* (*P. L.*, XL, 267 sqq.). On Luke XI, 41 see P. Schanz, *Lukas-Evangelium*, p. 333.—Th. Sommerlad, *Wirtschaftslehre*, pp. 8 sq.

51 Matt. XXV, 34–46; Luke VI, 38; XII, 33; XVI, 9; Heb. XIII, 16; Matt. V, 7; Jas. II, 13; cfr. Ps. CXI, 5.

52 Matt. X, 42; Mark XII, 42 sqq.; Luke XXI, 1–4.—St. Augustine, *Enarrat. in Ps.*, 103, s. 1, n. 19: *"Supplicem nullum spernas, et cui dare non potes, quod petierit, non eum spernas; si potes dare, da; si non potes, affabilem praesta. Coronat Deus intus voluntatem, ubi non invenit facultatem. Nemo dicat: Non habeo. Caritas non de sacello erogatur."* (Migne, *P. L.*, XXXVII, 1351).—*Ibid.*, 36, s. 2, n. 13: *"Videte egestatem, videte divitias. Ille accipit et non solvet, iste miseretur et commodat; abundat illi. Quid si pauper est? Etiam sic di-*

dantly; if thou have little, take care even so to bestow willingly a little." [53] Since, therefore, it is good and meritorious to give alms out of one's superfluous wealth,[54] it is still more meritorious to give away all one's possessions and become absolutely poor for Christ's sake, that is, to practice the voluntary poverty recommended in the Gospel.[55]

ves est. Tu tantum ad divitias eius pios oculos intende. Respicis enim arcam inanem, conscientiam Deo plenam non respicis. Non habet extrinsecus facultatem, sed habet intrinsecus caritatem. De caritate quanta erogat, et non finitur. Etenim si habet foris facultatem, dat ipsa caritas, sed ex eo quod habet; si autem non invenit foris, quod det, dat benevolentiam, praestat consilium, si potest; praestat auxilium, si potest; ad extremum si nec consilio nec auxilio adiuvare potest, vel voto adiuvat vel orat pro contribulato et forte magis ipse exauditur, quam qui porrigit panem. Habet semper, unde det, cui plenum pectus est caritatis. Ipsa est caritas, quae dicitur et voluntas bona. Plus a te Deus non exigit, quam quod tibi intus dedit. Vacare enim non potest voluntas bona. Non enim habens voluntatem bonam, etsi nummus tibi supersit, non porrigis pauperi: ipsi inter se pauperes praestant sibi de voluntate bona, non sunt inter se infructuosi." (*P. L.*, XXXVI, 371).—IDEM, *Enarr. in Ps.*, 125 n. 11: *"Seminate, quantum potestis. Sed parum habes, unde facies. Habes voluntatem? Quomodo nihil esset, quod habes, si non adesset bona voluntas, sic quia non habes, noli esse tristis, si est tibi bona voluntas. Quid enim seminas? Misericordiam. Et quid metes? Pacem. Numquid autem dixerunt angeli: Pax in terra divitibus hominibus? Sed 'pax in terra hominibus bonae voluntatis'* (*Lc.* ii, 14). *In Zachaeo magna voluntas, in Zachaeo caritas magna* (*Lc.* xix, 6–9) . . . *Magna voluntas; multum dedit, multum seminavit. Ergo vidua illa quae duo minuta misit* (*Lc.* xxi, 1-4), *parum seminavit? Immo tantum, quantum Zachaeus. Minores enim facultates ferebat, sed parem voluntatem habebat. Misit duo minuta de tanta voluntate, de quanta Zachaeus dimidium patrimonii sui. Si attendas quid dederunt, diversa invenies; si attendas unde dederunt, paria invenies: quidquid habuit dedit illa, et quod habuit dedit ille."* (*P. L.*, XXXVII, 1664).

53 Tob. IV, 9.

54 St. Alphonsus, *Theol. Mor.*, l. III, n. 31.—IDEM, *Homo Apost.*, tr. IV, n. 19: *"In gravi necessitate proximi tenemur ei subvenire ex bonis superfluis statui, sed in extrema etiam ex bonis superfluis vitae; immo in extrema possumus succurrere pauperi etiam de bonis alienis, cum nostris caremus."*

55 Matt. XIX, 21 sqq.—On the evangelical counsels see Vol. I of

READINGS.—St. Cyprian, *De Opere et Eleemosynis* (*Corpus Script. Eccles. Lat.*, Vol. III, 1, 373 sqq.).—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 30–32 (Rickaby, *Aquinas Ethicus*, I, 381 sqq.).—St. Alphonsus, *Theol. Mor.*, l. II, n. 31–33 (ed. Gaudé, I, 326 sqq.).—F. X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 483 sqq.—W. Roscher and Ch. J. Klumker, *System der Armenpflege und Armenpolitik*, 3rd ed., Stuttgart 1906.—J. G. Uhlhorn, *Die christliche Liebestätigkeit*, 3 vols., Stuttgart 1882 sqq., Vol. I, 2nd ed., 1895.—IDEM, *Die kirchliche Armenpflege*, Göttingen 1892, pp. 10 sqq.—G. Ratzinger, *Geschichte der kirchlichen Armenpflege*, 2nd ed., Freiburg i. B., 1884.—F. Schaub, *Die Eigentumslehre nach Thomas von Aquin*, pp. 382 sqq.—J. Lachaud, *La Civilisation ou les Bienfaits de l'Église*, Paris 1890.—L. Lallemand, *Histoire de la Charité*, 4 vols., Paris 1902 sqq.—J. N., Foerstl, *Das Almosen*, Paderborn 1909.—H. Noldin, S.J., *Summa Theol. Mor.*, Vol. II, pp. 104 sqq.—H. Parkinson, *A Primer of Social Science*, pp. 231 sqq.—Leo XIII, Encyclical *"Rerum Novarum"* (*The Pope and the People*, pp. 192 sq.)

this *Handbook*, pp. 236 sqq.—On *organized charity* and *professional charity workers* see Ross, *Christian Ethics*, pp. 215 sqq.

SECTION 7

DUTIES WITH REGARD TO THE MORTAL REMAINS OF THE DEAD

1. General Remarks.—The belief that we owe reverence and respect to the bodies of our departed fellowmen is deeply ingrained in human nature.

a) All nations agree that it is the duty of a dead man's relatives to provide for the decent burial of his body and that his friends and those indebted to him for favors should join in paying him the "last honors," *i. e.*, accompany his corpse to its final resting-place.[1] From this conviction arose certain burial forms or rites, which differed according to the stage of culture. Equally general is the belief that the denial of the customary burial rites is an act of dishonor towards the dead, his relatives and friends. An honest burial may be denied only to those who at the time of their death had notoriously forfeited every claim to honor and consideration.

b) The Catholic Church has approved and sanc-

1 Cfr. Gen. XLVII, 29; L, 1–13; I Kings XXXI, 11–13; 2 Kings II, 5.—Cfr. P. Lex, *Das kirchliche Begräbnisrecht*, pp. 3 sqq.

tified these general notions and customs regarding burial. In the light of Christian belief the mortal remains of the dead are invested with a higher significance. We owe them honor and reverence because they were organs of the spirit, and likewise on account of their participation in the supernatural life of grace and virtue led by the Christian believer, and because they are destined to rise again and become reunited with their souls.[2] The Church, therefore, did not abolish the civil funeral ceremonies, but transformed them into a religious and liturgical rite, the essential elements of which are the solemn blessing of the corpse, usually in church, and burial in consecrated soil and the offering up of prayers and sacrifices for the repose of the soul.

The Church denies the "last honors" of Christian burial only to those who, by some definite sinful act, have deprived themselves of honor among their fellowmen. She permits the erection of beautiful monuments to the dead for the reason that exhibition of honors does not cease with death,[3] and honors shown to a dead person reflect glory upon his family. But she condemns mere pomp or hypocritical ostentation as unbecoming.

2 St. Augustine, *De Civ. Dei*, l. I, c. 13: *"Nec ideo tamen contemnenda et abicienda sunt corpora defunctorum maximeque iustorum atque fidelium, quibus tamquam organis et vasis ad omnia bona opera sanctus usus est Spiritus."* (Migne, *P. L.*, CLI, 27). Cfr. also the same author's treatise, *De Cura pro Mortuis Gerenda*, c. 7, n. 9 (*Ibid.*, CL. 598).

3 Apoc. XIV, 13.

2. Burial or Cremation?—The interment of the dead, commonly known as burial (*inhumatio*), dates back to the beginnings of the human race. The divine sentence: "In the sweat of thy face shalt thou eat bread till thou return to the earth, out of which thou wast taken: for dust thou art, and into dust thou shalt return," [4] was verified among all the nations of antiquity, and even to-day burial is looked upon by all highly civilized peoples as the most becoming method of disposing of the mortal remains of man. The custom of burying corpses in the earth, or in sealed coffins in mausoleums above the earth, has entered into the practice and ritual of the Catholic Church. She devotes a special religious cult to the bodies of the dead and surrounds the ceremony of burial (*ordo exequiarum*), the place of burial, and the monument erected upon the grave with a profound and beautiful religious symbolism.[5]

a) The custom of burning the bodies of the dead (*crematio*) is of pagan origin and anciently was practiced mostly in connection with fire worship. The Jews never burned, but always buried, their dead.[6] Only in exceptional cases, to aggravate capital punishment, in times of war

4 Gen. III, 19; cfr. Ecclus. XL, 1.

5 *Rit. Rom.*, tit. VI, c. 1 and 3; cfr. F. Probst, *Die Exequien*, Tübingen 1856; C. Krieg, *Die Wissenschaft der Seelenleitung*, Vol. I, pp. 232 sqq.

6 Cfr. Gen. XXIII, 19; XXV, 9 sq.; XLVII, 29 XLIX 30 sq.; L. 2, 25.

or epidemics, or to prevent dishonoring by pagan enemies,[7] were corpses consigned to the flames. Cremation in the Old Testament was regarded either as a disgrace inflicted on the body, or as a sign of extreme necessity. Certain passages which have been quoted to prove that cremation was customary among the Chosen People, refer to the burning of aromatic spices at burials.[8] Christianity followed the Jewish practice of burying the dead, and ever since the earliest days of the Church, inhumation was looked upon as a specifically Christian and cremation as a specifically pagan custom,[9] though the New Testament contains no express prohibition of the latter.[10] It is recorded that, in times of persecution, the early Christians risked their lives to recover the bodies of their martyrs, that they might be buried with the sacred rites of the Church. The pagans, to destroy faith in the resurrection of the body, often cast the corpses of martyred Christians into the flames. Minucius Felix thus adverts to their belief that cremation makes resurrection impossible: "Nor do we fear, as you suppose, any harm from [this mode of disposing of the

7 Gen. XXXVIII, 24; Lev. XXI, 9; Am. VI, 10; 1 Kings XXXI, 12.

8 Jer. XXXIV, 5; 2 Chr. XVI, 14; cfr. J. Benzinger, *Hebräische Archäologie*, 2nd ed., Tübingen 1907, pp. 127 sqq.

9 Minucius Felix, *Octavius*, c. 11: "[*Christiani*] *et exsecrantur rogos et damnant ignium sepulturas.*" (Migne, *P. L.*, III, 267).

10 John XII, 7; cfr. D. A. Petrakakos, *Die Toten im Recht*, Leipsic 1905.

body], but we adhere to the old and better custom of inhumation." [11]

It is only of late years that in some countries cremation has been substituted for burial, and crematories with rooms for the storage of urns containing the ashes of the dead have begun to take the place of Christian cemeteries.

b) The reasons given for cremation are partly esthetic, partly psychological, partly economic, and partly hygienic.

a) From the standpoint of *esthetics,*[12] the cremationists contend, it is more becoming to the beauty of the human body to be dissolved by fire, which is a pure and cleansing element, than to rot in the earth, which is unclean and soiled. Cremation furthermore makes it possible to realize the poetic idea of preserving a genuine memorial of the departed in the form of their own ashes, kept in an urn, which serves as a decorative object.

In answer to this argument we may say that the process of cremation, while it is more rapid than that of natural decomposition, is by no means more attractive or

11 *Octavius,* c. 34: *"Nec, ut creditis, ullum damnum sepulturae timemus, sed veterem et meliorem consuetudinem humandi frequentamus."* (Migne, *P. L.,* III, 347). —A council held at Paderborn (Germany), in 785, decreed (can. 7): "Whoever cremates a corpse according to pagan custom, shall be punished with death." And again (can. 22): "The dead bodies of the Christian Saxons should be brought into the cemeteries of the Church and not buried in the mounds of the heathen." (Hefele, *Konziliengeschichte,* Vol. III, 2nd ed., pp. 636 sq.). The Order of the "Teutonic Knights" forbade the Prussians in the peace treaty of 1249 to burn the corpses of their dead. (Voigt, *Geschichte Preussens,* Vol. II, p. 626).

12 Cfr. J. Grimm, *"Ueber das Verbrennen,"* in *Kleinere Schriften,* Vol. II, Berlin 1865, pp. 211–313; K. Th. Schulz, *Eine neue Bestattungsart,* Berlin 1897, pp. 61 sqq.

more esthetic. The poetic idea referred to is merely a sentimental apotheosis of human nature, and its object can be more effectively realized by honoring the grave in which the mortal remains of the departed rest.

β) From the point of view of *psychology* this argument is advanced: It is repugnant to natural sentiment, and therefore inhuman, to commit the body of a departed relative or friend to a process of decay which cannot be visualized without a shudder. Cremation excludes the horrors of inhumation and is therefore to be preferred.

We answer: Aside from the fact that in a properly constructed grave the corpse does not become the prey of worms, human sentiment is repelled even more by the brutal destruction of the bodily remains of a relative or friend by fire, whereas, on the other hand, it is consoling to be able to visit the grave where a departed relative or friend has found his last resting-place after the labors and trials of life.

γ) In the interest of *agriculture* it is asserted that inhumation injures the public good by withdrawing a vast amount of soil from cultivation and confining a number of chemical elements indispensable to vegetation in a place where they cannot be utilized, thus gradually bringing about a lack of food, whereas cremation prevents this danger.

This argument is as unconvincing as the other two. The ground devoted to the burial of the dead in any given country is extremely small in proportion to the total area of arable land. Moreover, the chemical elements into which the body is dissolved in the grave are not lost, but for the most part absorbed by the ground water, which redistributes them in every direction.

δ) The principal argument adduced in favor of cremation is that derived from *hygiene*. It is claimed that

cemeteries are a constant menace to the public health because of the poisonous gases they exhale into the atmosphere and the decayed substances with which they infect the ground water, which feeds the wells and springs of the vicinity.

This specious argument is refuted by the testimony of competent experts, who declare that there is no danger whatever to the public health from properly kept cemeteries. No poisonous gases arise, and if any should arise, they would be instantly dissipated by the fresh air. Poisonous infiltration of the ground water is improbable, and we know of no case where it was ever proved that a well was poisoned by infiltration from a burial ground. Neither has it ever been demonstrated that an epidemic started from a cemetery, or that cemeteries, of which there are so many in or near our cities and towns, are a menace to health.[13] If such a danger were ever shown to exist, it could easily be obviated by the proper construction of coffins and tombs and the rational treatment of corpses. The danger of burying apparently dead persons can be avoided by legally enforced autopsy.

So much for the negative side of the question. Positively, it can be shown that inhumation is the best and simplest means of disposing of the mortal remains of the dead. It has been practiced from most ancient times and appeals to human sentiment as eminently decent and proper. Cremation, on the contrary, runs counter to that sentiment, and is, moreover, impractical. In the first place, crematories and columbaria would withdraw nearly as much soil from agriculture as burial grounds. Second, they are costly to erect and to operate. Third, cremation

13 J. Rochard, *"La Crémation,"* in the *Revue des Deux Mondes,* Vol. XCVIII (1890), pp. 916–944; G. Cornet, *Die Tuberkulose,* Vienna, 1899, pp. 29 sq., 40.

makes the post-mortem examination of corpses for medical and judicial purposes impossible, or at least extremely difficult, as some crimes cannot be detected by an analysis of the ashes after the corpse is burnt.[14] Inhumation has this further advantage over cremation that it makes possible the disinterment of a corpse long after death in case a suspicion of foul play arises where no one thought of it at the time.

It is asserted that cremation can at least be justified in exceptional cases, for instance, during dangerous epidemics or on the battlefield in time of war. But even this is doubtful. When an epidemic rages, the corpses of the victims can be more rapidly buried than burned, and to compel an army to drag along crematories would be an undue burden.

3. The Catholic Church forbids her children to enrol in societies established for the purpose of promoting cremation, or to direct that their own bodies or those of fellow-Catholics be burned after death. She has issued this prohibition for the reason that she looks upon cremation as a detestable abuse.[15] This opinion is based, not upon any dogmatic teaching concerning the human body and its resurrection,—for God can collect and revitalize ashes as easily as dust,—[16] nor on the impossibility of performing

14 Cfr. F. Goppelsröder, *Ueber Feuerbestattung*, Mühlhausen 1890.

15 *"Detestabilis abusus;"* *S. C. Offic.*, d. d. 19 May, 1886; d. d. 15 Dec., 1886; d. d. 27 July, 1892 (Denzinger-Bannwart, n. 1863 sq.).

16 Matth. XXII, 29.—Minucius Felix says (*Octavius*, c. 34): *"Corpus omne, sive arescit in pulverem, sive in humorem solvitur vel in cinerem comprimitur vel in nidorem tenuatur, subducitur nobis, sed Deo elementorum custodia reservatur."* (Migne, *P. L.*, III, 347). And again

the burial rite over the remains of a burnt corpse, which is quite often done for victims of conflagrations, but mainly on the anti-Christian, anti-ecclesiastical, materialistic, and pagan tendency of the cremation movement, and on the human, and particularly the Christian sentiment towards the mortal remains of man. It is repugnant to human nature to interfere arbitrarily and violently with the natural process of decay which the body undergoes after death, and in the second place the faithful Catholic, who regards Christ's death and grave as the pattern of his own demise and burial, can ask nothing better than that his mortal remains be buried as the sacred body of the Redeemer was buried, like "a seed sowed in God's acre, to mature in glory on the day of the resurrection." [17]

"What principally determined the Church to forbid cremation," says Msgr. Meyenberg, "was the observation

(*op. cit.*, c. 11): *"Quasi non omne corpus, etsi flammis subtrahatur, annis tamen et aetatibus in terram resolvatur, nec intersit, utrum ferae diripiant an maria consumant, an humus contegat, an flamma subducat, quum cadaveribus omnis sepultura, si sentiunt, bona sit, si non sentiunt, ipsa conficiendi celeritate medicina."* (*P. L.*, III, 267 sq.).

17 *"Saat gesäet von Gott, am Tage der Garben zu reifen,"* as the poet Klopstock puts it beautifully.—Cfr. Matth. XXVII, 58 sqq.; John V, 28 sq.; XI, 23; XIX, 38 sqq.; 1 Cor. XV, 24 sqq., 2 Cor. V, 10; Phil. III, 21.—St. Augustine, *De Civ. Dei*, l. I, c. 13: *"Istae auctoritates* (Matth. XXVI, 10–13; John XIX, 38–42) *non hoc admonent, quod insit ullus cadaveribus sensus, sed ad Dei providentiam, cui placent etiam talia pietatis officia, corpora quoque mortuorum pertinere significant propter fidem resurrectionis adstruendam."* (Migne, *P. L.*, XLI, 27).—St. Gregory the Great says (*Moral.*, l. IV, c. 27, n. 52): *"Quid enim aliud est sepelire quam abscondere?"* (*P. L.*, LXXV, 633).

that the advocates of this practice everywhere employed it as a means to undermine belief in the resurrection of the dead and to de-Christianize public life." [18]

The question of cremation does not involve an ecclesiastical dogma, nor is it a purely denominational question, but one in which all Christian churches should be equally interested for the sake of the preservation of an ancient Christian custom which cannot be abolished without grave scandal to the faithful.

It will not do to say that cremation is purely voluntary and must be conceded as a part of that religious freedom of which our age is so proud, for the advocates of cremation aim at making it compulsory, and they are not a religious sect. nor is cremation a religious rite. What they demand is not tolerance, but the enforcement of their impious and un-christian ideas.

The Holy Office has decided [19] that if a corpse has been cremated, not by order of the deceased, but at the command of others,[20] it may be buried with religious honors, provided the exsequies do not take place at the crematory and no scandal is given. Scandal need not be feared if it is publicly known that the deceased did not wish his body to be cremated. The new Code re-inforces the law that if a Catholic, while living, com-

18 *Schweizerische Kirchenzeitung*, Lucerne, 1909, p. 53.

19 Dec. 15, 1886.

20 "*Alienâ voluntate.*"

mands his body to be cremated, he is to be denied ecclesiastical burial.[21] If any one compelled a priest to give such a person ecclesiastical burial, he would be *ipso facto* excommunicated.[22] Formal co-operation in the act of cremation, be it by command or counsel, is unconditionally forbidden, though material co-operation may be tolerated under certain conditions.[23]

Lehmkuhl lays down the following rules for the guidance of Catholics:

a) It is not permitted actively to promote cremation, or to render it lawful, even for non-Catholics, by a positive concession, because it is objectively bad, *saltem ex adiunctis.* It is a rite pertaining to religion and consequently subject to the judgment of the Church, who has declared it illicit.

b) It is, however, permissible, for an adequate cause (*ex causa proportionate gravi*) to permit cremation negatively, *i. e.,* not to prevent others from performing it.[24]

4. The *section of corpses* for juridical or scientific purposes is permissible because of its importance for the study of medicine and for the benefit of suffering humanity.[25] It goes with-

21 *C. I. C.,* can. 1240, 1, 5.

22 *Ibid.,* can. 2339.

23 Decree of the Holy Office, July 27, 1892.

24 Lehmkuhl, *Theol. Mor.,* Vol. II, 11th ed., p. 676, 6.

25 Cfr. K. Gegenbaur, *Lehrbuch der Anatomie,* 6th ed., Leipsic 1895; F. X. Linsenmann, *Lehrbuch der Moraltheol.,* pp. 490 sqq.; J. Donat, S. J., *Die Freiheit der Wissenschaft,* Innsbruck 1910, pp. 214 sq. (English edition, *The Freedom of Science,* New York 1913),

out saying, however, that corpses used for this purpose must be properly interred and must not be abused. To treat human remains (whole corpses or portions thereof, bones, skeletons, etc.) irreverently is a sin, nay, under certain conditions, it may even be a sacrilege. The violation and desecration of graves and the scattering of human remains has always been regarded as a crime and severely punished.

Pope Boniface VIII, in his oft-quoted decretal,[26] did not forbid the anatomic section of corpses, but only the abuse, which had originated during the crusades, of separating the flesh from the bones in order to make possible the transfer of the latter to the home of the deceased.[27]

It has been decided that the hearts of dead persons may be preserved in jars or urns.[28] For the honor of humanity let us assume that the horrible crime of the sexual violation of corpses is committed only by insane persons.[29]

Readings.—J. P. Gury, *Comp. Theol. Mor.*, Vol. II, n. 790–796.—F. X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 487 sqq.—L. Ruland, *Die Geschichte der kirchlichen Leichenfeier*, Ratisbon 1901, pp. 2 sqq.—L. Henry, *L'Inhumation et la Créma-*

26 *Extrav. Com., Cap.* I l. 3, *tit.* 6: *"Corpora defunctorum exenterantes et ea immaniter decoquentes, ut ossa a carnibus separata ferant sepelienda in terram suam, ipso facto sunt excommunicati."*

27 Cfr. E. Michael, S. J., *Geschichte des deutschen Volkes*, Vol. III, p. 433 sq.; Lex, *Das kirchliche Begräbnisrecht*, pp. 220 sqq.

28 *S. R. C.*, d. d. 11 Feb., 1898: *"Conservatio ita fit, ut claudatur cor in ampulla vitrea, in visibili loco et inter flores ordinarie collocata. Potestne haec praxis continuari? Resp.: Affirmative, dummodo descripta conservatio non fiat loco sacro."*

29 Maschka, *Handbuch der gerichtlichen Medizin*, Vol. III, 192.

tion, Louvain 1876.—A. Besi and E. Holzinger von Weidich, *Die Beerdigung und Verbrennung der Leichen,* Ratisbon 1889.—G. Hassl, *Gottesacker oder Leichenofen?* Augsburg 1898.—P. Winkler, *Verbrennen oder Begraben?* Innsbruck 1902.—F. Probst, *Die Exequien,* Tübingen 1856.—E. Berardi, *De Crematione Cadaverum,* Bruges 1904.—Wm. Devlin, S.J., art. "Cremation" in the *Catholic Encyclopedia,* Vol. IV, pp. 481–483.—H. Noldin, S.J., *Summa Theol. Mor.,* Vol. II, pp. 742 sqq.—A. Lehmkuhl, S.J., *Theol. Mor.,* Vol. II, pp. 673 sqq.—B. L. Conway, C.S.P., *The Ethics and History of Cremation,* N. Y. 1923.

SECTION 8

DUTIES WITH REGARD TO THE BODILY LIFE OF OTHERS

We owe a twofold duty to our fellowmen with regard to their bodily life. The first of these is purely negative, namely, to omit whatever might destroy or injure their life or health, be it directly or indirectly, totally or partially, suddenly or gradually. Hence the prohibition of murder, manslaughter, mutilation, crimes against the life of unborn children, and duelling.

1. MURDER or voluntary homicide (*homicidium voluntarium sive praemeditatum*), is the unjust, intentional, and premeditated killing of an innocent man.[1] Sacred Scripture numbers this

1 Ex. XX, 13; XXI, 12; cfr. Matth. V. 21; XIX, 18.—St. Augustine, *Epist.*, 204 (*al.* 61). n. 5: *"Nullis iubentibus legibus vel legitimis potestatibus non licere alterum occidere, etiam volentem et petentem et vivere iam non valentem satis indicat Scriptura Regnorum, ubi rex David regis Saulis interfectorem iussit occidi, quum ille dixisset ab eo iam saucio atque semivivo petitum se fuisse, ut hoc faceret et animam corporis nexibus obluctantem solvique cupientem uno ictu vulneris ab illis cruciatibus liberaret* (2 Kings i. 1–16). *Proinde quia omnis, qui sine ulla legitimae potestatis auctoritate hominem occidit, homicida est."* (Migne, *P. L.*, XXXIII, 940).—Cfr. *Cat. Rom.*, P. III, c. 6, qu. 9: *"Quod ad eos pertinet, qui caedem faciunt, nemo plane excipitur, non divites, non potentes homines, non domini, non parentes, sed delectu omni et discrimine remoto occidere vetitum est omnibus."*

crime amongst those that cry to Heaven for vengeance.[2]

Murder, like conscious and voluntary suicide, is an act of criminal interference with the supreme prerogatives of Almighty God (*crimen laesae maiestatis divinae*), a most grievous sin against justice and charity, and a crime against society.[3]

Murder may be either simple or qualified.

Simple murder (*homicidium simplex*) is the killing of a person towards whom one has merely the general obligations of justice and charity. *Qualified* murder (*homicidium qualificatum*) is voluntary homicide aggravated by circumstances which alter the nature or degree of the crime. Such circumstances are: (a) the position or rank of the victim; (b) the latter's relation towards the murderer, for instance, of husband to wife, father to child or child to father (*parricidium*), priest to layman (*sacrilegium*), ruler to

2 Gen. IV, 10; IX, 5 sq.; cfr. *Cat. Rom.*, P. III, c. 6, qu. 14.

3 St. Thomas, *Summa Theol.*, 1a 2ae, qu. 100, art. 5, ad 5; cf. 2a 2ae, qu. 73, a. 3; qu. 122, a. 6, ad 4: *"Homicidium secundum se non est concupiscibile, sed magis horribile, quia non habet de se rationem alicuius boni."*—*Ibid.*, qu. 47, a. 6, ad 3: *"Ille, qui occidit hominem, iniuriam facit non solum homini occiso, sed etiam Deo et reipublicae."*—Cfr. *Cat. Rom.*, P. III, c. 6, qu. 15: *"Sunt enim homicidae humani generis atque ideo naturae hostes acerbissimi, qui quantum in eis est, universum Dei opus evertunt, quum hominem tollant, cuius causa is omnia quaecunque procreata sunt, se fecisse testatur; immo vero in Genesi* (v, 9), *quum prohibitum sit hominen occidi, quia illum Deus ad imaginem suam et similitudinem creavit, insignem Deo iniuriam is facit quasique violentas illi manus afferre videtur, qui eius imaginem e medio tollit."*

subject (*regicidium*); (c) the conditions under which the crime is committed, for example, its object and purpose (robbery; *latrocinium*) or the means used in committing the crime, *e. g.,* poison (*veneficium*), treachery (*homicidium proditorium*). All these circumstances increase the guilt of the crime, make it more atrocious and deserving of severer punishment.[4]

a) The *involuntary* killing of a human being (*homicidium involuntarium*), commonly called *manslaughter,* is usually committed in a moment of passion and is imputable and punishable in proportion to the measure in which the use of free will was not hindered. *Infanticide, i. e.,* the killing of an illegitimate child by its own mother during or soon after birth, is classed as manslaughter by the criminal law of some countries. But as passion does not always diminish imputability, the moralist must judge each case on its own merits. Morally equal to infanticide is the *exposure of an infant, i. e.,* the intentional abandonment of the same in a helpless condition, unless there is the greatest probability that it will be picked up and cared for.

In regard to the killing of babies by their own mothers it should be remembered that this crime is quite often committed under compulsion, rather than voluntarily, for which reason the civil law usually deals with it le-

4 2 Kings III, 27; 1, Mach. VII, 14–18.

niently. Great excitement, a delirious condition, bodily weakness, loss of blood, pains, the feeling of being deserted, worry about the future, fear of disgrace,—all these and other circumstances may conspire to create an exceptional state of mind in which the responsibility for the crime is realized either not at all, or but dimly.[5]

b) *Accidental killing* (*homicidium casuale*) *i. e.,* homicide not by direct intention, but as a consequence of some dangerous act (*voluntarium in causa*), is imputable to the agent if he is aware of the danger of killing some one at the time he performs the act, *e. g.,* driving at great speed in a crowded street, handling a gun carelessly, letting dangerous animals run amuck, and so forth. When no such probable danger exists, or when it is not adverted to, casual homicide is not imputable in conscience, although if the act is legally forbidden, even on other grounds than the chance of causing another's death, and some one is killed by it, the secular law in many countries punishes it as manslaughter.

Accidental killing is committed by *physicians, surgeons,* and *midwives* who cause the death of their patients by culpable incompetency or lack of attention; by druggists who through ignorance or carelessness compound deadly medicines; by *nurses* and *attendants* who do not give proper care to their patients; by *factory owners* and

5 Huber, *Hemmnisse der Willensfreiheit,* 2nd ed., p. 234, note 1.

mine operators who omit to take reasonable precautions for the protection of their employees and thus become responsible for serious accidents,—in short by all who cause the death of others by acts which, in virtue of their position, profession, or office, they know or ought to know are dangerous to life.[6]

Midwives or *nurses* who receive children with the silent understanding that they dispose of them, and then let them starve to death, are guilty of premeditated murder, unless their conduct is attributable to carelessness.

2. *Mutilating* another or injuring his health is sinful if done against his reasonable will. To this class of forbidden acts belong *corporeal maltreatment,* the infliction of unnecessary pain by *beating* or *wounding, overburdening with work, cruel treatment,* handing out insufficient or adulterated and consequently *injurious food,* etc. Strong emotions, too, such as, for instance,

6 Ex. XXI, 28 sq.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 64, art. 8.—P. G. Antoine, *Theol. Mor. Universa,* t. III, tr. *De Iust. et Iure,* P. III, c. 2, qu. 12: *"Homicidium omnino casuale, quod scilicet nec est in se nec in sua causa voluntarium, non est peccatum, immo nec proprie homicidium, sed simplex occisio. Quia peccatum est essentialiter voluntarium, ergo quod nullo modo voluntarium est, nullatenus peccatum. Hinc qui occidit alterum in ebrietate inculpabili, non est reus homicidii, nec tenetur ad restitutionem, quia occisio illa non est voluntaria, neque in se, quum desit usus rationis, neque in causa, nempe in ebrietate, quum haec non fuerit ullatenus volita nec culpabilis. Secus si ebrietas fuit culpabilis et ebrius hunc casum praevidit vel praevidere potuit, nam tunc occisio est voluntaria in causa ideoque imputabilis ad culpam et damnum."*—M. Cronin, *The Science of Ethics,* Vol. II, pp. 103 sqq.—For an interesting case at law see Pollock, *Law of Torts,* 8th ed. pp. 48 sqq.

fear, anger, and even excessive joy, can injure the human organism and imperil its existence, nay, destroy it, by causing paralysis of the heart, or psychoses and serious derangements of the nervous system, such as epileptiform or hysterical convulsions, and so forth.[7]

Any injury unjustly done to the *health* or members of another against his reasonable will is a violation of justice and a mortal sin, unless passion, previously suffered injury or smallness of matter (*parvitas materiae*) diminish the guilt. Mutilations which entail the loss of the procreative faculty (*castratio, emasculatio*) are inspired by greater malice and are therefore more severely punished by the civil law.

3. Crimes against the Unborn.—Every morally forbidden act or omission which results in the death of an embryo or a fetus in the mother's womb, from the time of conception until or during delivery, is morally equivalent to manslaughter.[8] The Catholic Church has always regarded the value and dignity of human life so highly that she never permitted it to be destroyed or injured even in its incipient

7 Cfr. Maschka, *Handbuch der gerichtlichen Medizin*, Vol. I, pp. 809 sqq.

8 St. Augustine, *Enchiridion*, c. 86: "*Ex quo incipit homo vivere, ex illo utique iam mori potest.*" (Migne, *P. L.*, XL, 272).—Cfr. the propositions condemned by Pope Innocent XI, n. 35: "*Videtur probabile omnem foetum (quamdiu in utero est) carere animâ rationali et tunc primum incipere eandem habere, quum paritur, ac consequenter dicendum erit, in nullo abortu homicidium committi.*" (Denzinger-Bannwart, n. 1185).

stages.[9] Acts or omissions tending in that direction are imputable in proportion to the guilt involved, and it is owing to the influence of the Church that they are punished also by the civil law. In our neo-pagan age a movement has been started to make *feticide* legal.

a) Women who through their own fault, *e. g.*, by an inordinate mode of life, by voluntarily produced or sustained excitement of the passions, or incautious physical exertion, bring about a *miscarriage* (*abortus, i. e.*, a delivery before the twenty-eighth week of pregnancy) commit a mortal sin. Pregnant women, especially if they are disposed to miscarriage, are bound in conscience to avoid such occasions as hiking, dancing, driving over rough roads, long railroad or automobile rides, lifting or carrying heavy burdens, the abuse of alcoholic liquors, and the use of power machinery.

It is sinful to maltreat a pregnant woman or

9 *Doctr. XII Apost.*, c. II, n. 3; *τέκνον ἐν φθορᾷ, οὐδὲ γεννηθὲν ἀποκτενεῖς.* Funk, *Patres Apost.*, Vol. I, 2nd ed., VIII, 1; Kirsopp Lake, *The Apostolic Fathers*, Vol. I, pp. 312 sq.); *Epist. Barnab.*, c. 19, n. 5: *οὐ φονεύσεις τέκνον ἐν φθορᾷ, οὐδὲ πάλιν γεννηθὲν ἀποκτενεῖς* (Funk, *op. cit.*, p. 90, 22: K. Lake, *op. cit.*, p. 404): *Epist. ad Diognet.*, c. 5 n. 6: *γαμοῦσιν ὡς πάντες τεκνογονοῦσιν ἀλλ' οὐ ρίπτουσι τὰ γεννώμενα* (Funk, *op. cit.*, p. 398, 10; Lake, *op. cit.*, Vol. I, p. 360): Tertullian, *Apol.*, c. 9: *"Nobis vero homicidio semel interdicto etiam conceptum utero, dum adhuc sanguis in hominem delibatur, dissolvere non licet. Homicidii festinatio est prohibere nasci nec refert, natam quis eripiat animam an nascentem disturbet. Homo est, et qui est futurus; etiam fructus omnis iam in semine est."* (Ed. Leopold, Vol. I, p. 68).—Minucius Felix, *Octavius*, c. 30 (Migne, *P. L.*, III, 333 sq.).

to overburden her with work, etc., thereby causing a miscarriage or creating a disposition for it.[10]

b) To procure *abortion* directly and intentionally, by the ejection of the fertilized ovum or the fetus from the uterus before it is viable, is a grievous crime, whether committed by the mother or by another person. Morally such an act must always be regarded as an intentional destruction of human life, since the distinction formerly made between *foetus animatus* and *foetus inanimatus* is physiologically untenable.[11]

10 Ex. XXI, 22 sq.—Gury, *Comp. Theol. Mor.*, Vol. I, n. 380: *"Tenentur parentes curam prolis sedulam gerere ab ipsa conceptione, avertere omnia, quae ipsi nociva esse possunt, et invigilare, ne ulli vitae periculo exponatur. Hinc peccant per se graviter: 1. mulieres, quae non cavent, ne foetus in utero perimatur inordinatis lasciviis, saltationibus, oneribus gravioribus, cursu aut itinere diuturno, nimia iracundia aut moerore vehementiore; 2. viri, qui praegnantes uxores aspere tractant, gravibus vulneribus afficiunt aut ipsis maiores imponunt labores."*—*Ibid.*, n. 415, 5: *"Homicidae sunt, qui percutiunt mulierem praegnantem vel terrefaciunt, ita ut abortus sequatur. Item mulieres gravidae, quae imprudentia gravi variis modis abortus causam proximam ponunt, v. g. nimiis laboribus operam dando, onera maiora asportando, pedes in aqua frigida lavando."*

11 Cfr. Prop. 34 among those condemned under Innocent XI: *"Licet procurare abortum ante animationem fetus, ne puella deprehensa gravida occidatur aut infametur."* (Denzinger-Bannwart, n. 1184).—Cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 414: *"Nunquam licet directe procurare abortum, etiamsi foetus supponeretur adhuc inanimatus, sub quocunque praetextu mortis vitandae etc. Ratio, quia si animatus sit foetus, est homicidium proprie dictum. Si vero non sit animatus, est homicidium anticipatum. Foetus enim, etiam non animatus, ordinatur ad hominem formandum, ergo illius eiectio est homicidium anticipatum."*—*Ibid.*, n. 415, 1: *"Non licet puellae gravidae pharmacum sumere ad foetum expellendum, ne famam amittat aut ne a patre furioso occidatur, quia directe procuraretur abortus."*—Cfr. Antonelli, *Medicina Pastoralis*, Vol. I, 3rd ed., pp. 190 sqq.; L. Knapp, *Theologie und Geburtshilfe*, Prague 1908, pp. 50 sqq.

Intentional co-operation in bringing about abortion (*procuratio abortus*) is likewise strictly forbidden. What renders this sin all the more grievous is the fact that the fetus which is thus destroyed is robbed not only of life, but of the grace of Baptism, and that the crime, when committed by the mother or near relatives, partakes of the nature of *parricidium*.

The assertion that every child "has the right not to be born" is contrary to Catholic teaching and therefore untenable.

c) Medical science has devised certain artificial means for saving the life of both mother and child, or at least that of the mother, in cases where, on account of some physical obstruction, normal delivery is impossible. Such means are: medical abortion, artificially produced premature delivery, perforation, the Cesarian section, laparotomy, and symphyseotomy.[12]

The S. Congregation of the Penitentiary, on Nov. 28, 1872, replied evasively to the question whether "the operation called *craniotomy*, or a similar operation aiming directly at the killing of the child in its mother's womb were ever permissible," [13] but the Holy Office declared on May 28, 1884, that the permissibility of craniotomy *"tuto doceri non posse," i. e.,* cannot be safely

12 On these operations, see A. O'Malley, *The Ethics of Medical Homicide, passim*, N. Y. 1919.

13 *S. Poenitentiaria*, decree of 28 Nov., 1872: *"Mature perpensis propositis respondet: consulat probatos auctores sive veteres sive recentiores, et prudenter agat."*

taught in Catholic schools or practiced without danger of sin. This decision was followed by two others of the same S. Congregation, dated respectively, Aug. 13, 1889, and July 29, 1895, by which this prohibition was extended so as to include "all surgical operations aiming directly at the killing of the fetus or the mother." [14] The S. Congregation in making this decision had before it a case in which craniotomy (perforation) was the sole means of saving the mother.[15] Hence the following principles must guide us in the moral appraisal of this obstetrical operation: [16]

a) *Artificial* or *medical abortion* (*abortus medicinalis*), *i. e.*, the ejection from the womb of an immature fetus or a fertilized but not yet viable embryo,[17] is direct homicide and, therefore, a grievous crime against the fifth commandment. Abortion is, moreover, a more or less dangerous attack upon the life of the mother, and therefore an attempt upon two lives at once. Modern gynecology knows of but two diseases in which abortion may be indicated as a last resort.[18] The causes of the first may

14 Denzinger-Bannwart, n. 1889 sq.; Cfr. Chas. Coppens, S. J., *Moral Law and Medical Practice*, ed. Spalding, N. Y. 1922, pp. 58 sqq.

15 *"Quando scilicet ea [craniotomia] omissa mater et filius perituri sint, ea contra admissa salvanda sit mater infante pereunte."*

16 Capellmann, *Medicina Past.*, 9th ed., Aix-la-Chapelle 1893; B. M. Bergervoort, *Direkter Abortus und Kraniotomie und deren Erlaubtheit*, Munich 1896; F. Guermonprez, *L'Assassinat Médical et le Respect de la Vie Humaine*, Paris 1904; Chas. Coppens, S. J., *Moral Law and Medical Practice*, ed. Spalding, New York 1922; Stöhr-Kannamüller, *Handbuch der Pastoralmedizin*, 5th ed., pp. 461 sqq.; Antonelli, *Medicina Past.*, Vol. II, 3rd ed., pp. 55 sqq.; A. Klarmann, *The Crux of Pastoral Medicine*, New York 1920.

17 O'Malley, *The Ethics of Medical Homicide*, pp. 91 sqq.

18 J. P. Gury, *Comp. Theol., Mor.*, Vol. I, n. 414: *"Licet aliquando indirecte abortum procurare seu permittere, subministrando videlicet matri morbo gravi laboranti remedia foetui nociva, si conditiones sequentes occurrunt, scilicet: 1. Ut agatur de morbo fetali; 2. Ut remedia foetui nociva sint per se ad morbum curandum directe et immediate efficacia; 3. Ut nulla sit spes foetui illi per baptismum vitam aeternam procurandi . . . Licet medicis porrigere mulieri gravidae*

be removed by the administration of chloroform, while the second (*hyperemesis gravidarum*), usually the result of hysteria, is of rare occurrence and as a rule not only ceases about the middle of the gestation period, but can be cured by rational therapy. Hence the first duty of the physician in such cases is to endeavor to remove the underlying causes. Abortion should be avoided for the additional reason that it is a very doubtful means, to say the least, of saving the life of the mother.

Indirect abortion, on the other hand, is permissible in certain cases, *i. e.,* if it results accidentally from the application of remedies which are *per se* intended and apt to cure the mother. It is permissible, therefore, in the treatment of pregnant women who are suffering from a disease, even if there is no immediate danger of death, to employ internal or external remedies which, in the common experience of the medical profession, are necessary or apt to cure the disease from which the mother is suffering, even though they may accidentally cause abortion.[19] When there is immediate danger of death, such means may be used as will be necessary to cure the mother, even though it were certain or highly probable that abor-

aegrotanti pleraque remedia pro variis morbis consueta, etsi quandoque abortus sequi potest. Ratio est, quia experientia constat, abortum rarissime sequi ex pierisque remediis ordinatis."—Ibid., n. 415: *"Non licet matri gravidae, etiam in certo mortis periculo, sumere aut etiam ei praebere medicinam ex vi sua ordinatam ad eiectionem foetus, quamvis mors utriusque certo futura sit, si non adhibeatur, et e contra certo aut probabiliter sit salvanda, si adhibeatur. Ratio est, quia abortus directe procuraretur. . . . Licet medico praebere remedium de se ordinatum ad morbum matris curandum, si certo constet, non dato remedio et matrem alioquin morituram et foetum sine baptismo extinctum iri, quia sic tum mater tum foetus, quo meliori modo possunt, iuvantur; sed rarissime de utroque constabit. Si vero aequale sit periculum abortus, sive remedium sumatur sive non, illud habere licitum est, quia sine maiori periculo foetus vitae matris consulitur."*

19 Gury, *Comp. Theol. Mor.,* Vol. I, n. 415, 2: *"Non licet medicis vel obstetricibus, quum mulier gravida est, foetum occidere ad matrem a morte liberandam."*

tion would follow, provided there is no other effective remedy to save the mother and all possible precautions are taken to prevent abortion.

β) It is lawful to induce premature delivery by artificial means as soon as the fetus is viable, *i. e.,* so far developed that it can live outside the womb. However, this operation may endanger the lives of both mother and child, and should, therefore, be resorted to only in urgent cases. Such an emergency would arise if the birth of the child at the end of the full period would necessitate a still more dangerous operation, or if the mother were suffering from a serious illness that could probably be cured by inducing a premature delivery. Though the latter process may not entirely comply with the final object of delivery, *i. e.,* to bring into the world a fully developed and healthy child, it at least involves no direct destruction of life and makes possible the administration of Baptism in case the child should die.

γ) *Obstetrical operations* that result in the destruction of the life of the child (*craniotomy, cranioclasy, cephalotripsis, embryotomy* [decapitation or exenteration]) are directly homicidal and therefore absolutely forbidden. Though the resultant death of the mother is not attributed to the operation, but to the disease which the operation was designed to cure, there is always involved a certain danger to the mother from the careless use of instruments or some other accident. If the fetus is dead, there is no objection to craniotomy. In case of doubt whether the fetus is dead or alive, the physician may operate if the mother's life is in danger. In this extremely delicate question the principle of self-defense in the strict sense cannot be invoked in favor of the mother. However, the physician may consider himself in a state of perplexity from which he can extricate himself only by choosing the

safer side, *i. e.*, by saving the *certain* life of the mother. Besides he would make himself liable to prosecution if he omitted to use the means prescribed for such cases in the current text-books on obstetrics.[20]

δ) The so-called *Cesarian section* (*sectio caesarea*), which consists in cutting open the womb (*incisio ventris*) to extract a fetus that cannot be delivered in the natural way, is in itself an immediate attack upon the life of both mother and child but its technique has been so perfected that it is no longer as hazardous as it used to be and may, therefore, be permitted, provided the danger to the mother is not so immediate that the operation would mean almost certain death. All possible precautions must moreover be taken to safeguard the lives of both mother and child.[21] Note, however, that the favorable results referred to have for the most part been achieved in a comparatively small number of hospitals and clinics and that the percentage of mortality still remains rather high. The ordinary practitioner, according to Dr. O'Malley, is utterly unfitted to do a Cesarian section of any kind.[22]

20 P. A. Finney, C. M., *Moral Principles in Hospital Practice*, St. Louis, Mo., 1922; O'Malley, *The Ethics of Medical Homicide*, pp. 92 sqq.; Coppens, *Moral Principles and Medical Practice*, pp. 62 sqq.

21 *S. C. Offic.*, d. d. 4 May 1898: "1. *Eritne licita partus acceleratio quoties ex mulieris arctitudine impossibilis evaderet foetus egressio suo naturali tempore? 2. Et si mulieris arctitudo talis sit, ut neque partus praematurus possibilis censeatur, licebitne abortum provocare aut caesaream suo tempore perficere operationem? 3. Estne licita laparotomia quando agitur de praegnatione extrauterina seu de ectopicis conceptibus? Respondetur ad* 1: *Partus accelerationem per se illicitam non esse, dummodo perficiatur iustis de causis et eo tempore ac modis, quibus ex ordinariis contingentibus matris et foetus vitae consulatur; ad.* 2: *Quoad primam partem negative iuxta decretum feriae IV d. d. 24 Julii 1895 de abortus illiceitate. Ad secundam vero quod spectat, nihil obstare, quoniam mulier, de qua agatur, caesareae operationi suo tempore subiiciatur; ad* 3: *Necessitate cogente licitam esse laparotomiam ad extrahendos e sinu matris ectopicos conceptus, dummodo et foetus et matris vitae, quantum fieri potest, serio et opportune provideatur.*"—Cfr. Knapp, *Theologie und Geburtshilfe*, pp. 70 sqq.

22 *The Ethics of Medical Homicide*, p. 138.

Porro's operation, so-called, consists in the removal of the uterus after a Cesarian section to prevent further conceptions, and is altogether unjustifiable.[23]

As regards the Cesarian section, a mother is, broadly speaking, not obliged to submit to it and should be counseled to do so only in view of the eternal salvation of her child. This consideration must not, however, always be urged *in praxi,* because it might lead to the commission of a mortal sin and consequently bring about the eternal loss of the mother.

If a mother dies in the state of pregnancy, the Cesarian section should, if possible, be performed on the corpse, to save the eternal and perhaps also the temporal life of the child.[24]

ε) *Symphyseotomy* (*sectio symphyseos*) is a cutting of the maternal pelvic girdle through the symphysis pubis, the rigid joint at the front middle part of the pelvis, thus letting the bony girdle dilate. It has latterly been replaced by *hebosteotomy* or *pubiotomy* (a sawing through that joint to effect the dilation) because the rate of mortality is somewhat lessened by the latter method.[25] Both operations are to be judged in the same light as the Cesarian section, that is to say, they are licit only when they do not involve direct homicide.

4. DUELLING.—A duel is defined as a premeditated and pre-arranged combat with deadly weapons, between two persons, usually in the

23 O'Malley, *Essays in Pastoral Medicine,* p. 59.

24 *Rit. Rom.,* tit. II, c. 1, n. 17: "*Si mater praegnans mortua fuerit, foetus quamprimum caute extrahatur ac, si vivus fuerit, baptizetur.*" —*S. C. Offic.,* d. d. 13 Dec., 1899. —Cfr. Stöhr-Kannamüller, *Handbuch der Pastoralmedizin,* 5th ed., pp. 473 sqq.; Antonelli, *Medicina Past.,* Vol. II, 3rd ed., pp. 71 sqq.

25 O'Malley, *The Ethics of Medical Homicide,* p. 135.

presence of witnesses, called seconds, for the purpose of deciding a quarrel, avenging an insult, or clearing the honor of one of the combatants, or of some third party, whose cause he has espoused.[26]

A duel, therefore, differs from an ordinary fight, from single combat (by which the fate of a battle is sometimes determined), and from the so-called *mensuren* of European students. The latter as a rule exclude the motive of revenge and serious danger to life, and are mere sports, though they sometimes degenerate into real duels and must be judged as such.

Duelling is in itself immoral because it is an illegitimate interference with God's property right in human life.[27] It is a usurpation of justice, for which there is no legitimate excuse in a well-ordered State. As a means for deciding a quarrel or vindicating the honor of the combatants, it is totally inappropriate, because there is no intrinsic proportion between the means used and the end sought for.

A duel would be an appropriate means for the preservation of honor if, as the ancient pagans and not a few medieval Christians believed, it represented a sort of divine ordeal in which truth and justice always triumph.

26 Slater, *A Manual of Moral Theology*, Vol. I, p. 316.

27 Ex. XX, 13; Deut. XXXII, 29; Wisd. XVI, 13 sq.; Rom. XIV, 7 sq.

But this is not the case. In a duel the victory does not depend on the justice of one's cause, or the probity of one's character, but on such extrinsic factors as greater strength or superior skill in the handling of deadly weapons.

Duelling has been condemned as a detestable practice by the Council of Trent and the excommunication pronounced against the guilty parties, their seconds and abettors is renewed in the new Code of Canon Law. The latter also denies ecclesiastical burial to those who die as the result of a duel, unless they give signs of repentance before death, and refuses them public funeral services, exequial and anniversary masses.[28]

As duelling is not a common practice in English-speaking countries (for which this Moral Theology is intended) we need not enter into details. Under English and American law duelling is illegal, and if it results in death, it is regarded as murder, and the seconds are liable to punishment as accessories.[29]

READINGS.—On HOMICIDE: St. Thomas, *Summa Th.*, 2a, 2ae, qu. 64, art. 8; qu. 65, art. 1 (Rickaby, *Aquinas Ethicus*, II, 48 sqq.).—St. Alphonsus, *Theol. Mor.*, l. III, n. 363 (ed. Gaudé, I, 621).—Pruner, *Die Lehre vom Recht*, Vol. II, pp. 106 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 491 sqq.—F. v. Holtzendorf, *Die Psychologie des Mordes*, Stuttgart 1875.—H. Noldin, S.J., *Summa Theol. Mor.*, Vol. II, pp. 360 sqq.—A. O'Malley, *The Ethics of Medical Homicide and Mutilation*, New York 1919, pp. 1 sqq.—J. E. Ross, C.S.P., *Christian Ethics*, pp. 266 sqq.—H. Noldin, S.J., *Summa Theol. Mor.*, Vol. II, pp. 360 sqq.

On MUTILATION: Th. Meyer, S.J., *Inst. Iuris Nat.*, Vol. II, pp. 65 sqq.—A. O'Malley, *The Ethics of Medical Homicide and Mutilation*, New York 1909, pp. 23 sqq.

On CRIMES AGAINST THE UNBORN: H. Noldin, S.J., *Summa*

28 *C. I. C.*, can. 2351, 1; 1240, 1, 4; 1241.

29 Slater, *Moral Theology*, Vol. I, p. 318.

Theol. Mor., Vol. II, pp. 364 sqq.—A. O'Malley, *The Ethics of Medical Homicide and Mutilation*, N. Y. 1919, pp. 92 sqq.—A. O'Malley and J. J. Walsh, *Essays in Pastoral Medicine*, N. Y. 1906, pp. 48 sqq.—Chas. Coppens, S.J., *Moral Principles and Medical Practice*, new ed. by Spalding, S. J., N. Y. 1921, 37 sqq. —J. Antonelli, *Medicina Pastoralis*, Vol. II, 4th ed., Rome 1920. —J. M. Harty, "The Church and the Unborn Child," *Irish Theol. Quarterly*, Vol. I (1906), No. 2.

On DUELLING: H. Noldin, S.J., *Summa Theol. Mor.*, Vol. II, pp. 374 sqq.—Ferraris, *Bibliotheca Canonica, s. v.* "Duellum."—A. Wiesinger, *Das Duell vor dem Richterstuhl der Religion, der Moral, des Rechtes und der Geschichte*, Graz 1896.—M. Cronin, *The Science of Ethics*, Vol. II, pp. 105 sqq.—J. Rickaby, S.J., *Moral Philosophy*, pp. 222 sqq.—Th. Meyer, S.J., *Inst. Iuris Nat.*, Vol. II, pp. 76 sqq.

CHAPTER V

MAN'S DUTIES WITH REGARD TO THE TEMPORAL POSSESSIONS OF HIS FELLOWMEN

SECTION 1

THE ORIGINAL TITLES OF PRIVATE OWNERSHIP

1. The right of ownership (*dominium*) is defined as "the permanent and exclusive right of retaining, controlling, and disposing of an object in one's own interest and according to one's own wishes." [1] It is derived from nature itself and protected by the natural law.[2]

1 Cfr. M. Cronin, *The Science of Ethics*, Vol. II, p. 113.—J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 533: *"Dominium est facultas legitima disponendi de re aliqua tamquam sua. Dominium praecipue dividitur in perfectum et imperfectum, prout est ius disponendi tum de re ipsa tum de eius utilitate aut de alterutro tantum. Imperfectum autem subdividitur in directum et indirectum, id est utile, prout respicit solam rei proprietatem vel solam eius utilitatem. Distinguunt etiam communiter dominium altum et humile. Prius est dominium improprie dictum et dicitur ius, quod habet suprema auctoritas disponendi aliquando de bonis privatorum ex gravissima causa in bonum communitatis cum debita compensatione, inquantum fieri potest. Posterius est dominium privatorum, cui proprie definitio convenit."* Cfr. Pruner, *Lehre vom Recht*, Vol. I, pp. 248 sqq.

2 Leo XIII, Encycl. *"Quod apostolici,"* Dec. 28, 1878: *"Ius proprietatis et dominii ab ipsa natura profectum, lege naturali sancitum."* —IDEM, Encycl. *"Rerum novarum,"* May 15, 1891: *"Possidere res privatim ut suas ius est homini a natura datum. . . . Quod demonstravimus, ius dominii personis singularibus natura tributum, id trans-*

All ownership is based on some ground, usually called title. A title is a factor or an event by which a particular owner comes to have a right to his property. There is a variety of such titles, partly original or primary, partly derivative or secondary. An original title of ownership is one by which objects that belong to no one are appropriated, or by which existing private property is increased or improved. A secondary title is one based upon donation or legitimate purchase from a previous owner.

2. The chief original titles of ownership are: occupancy, accretion, and labor.

a) Occupancy (*occupatio*), the first and most primitive title of private ownership, is defined as the actual appropriation of ownerless objects with the intention to keep them as one's own. This title of ownership (*ius primi occupantis*) presupposes that the object in question is by nature fit to become private property (*res capax dominii privati*). Hence it must not belong either to State or Church, nor be of such a nature that it cannot be occupied, *e. g.*, the sea or air. Secondly, it must be actually ownerless, that is to

ferri in hominem, qua caput est familiae oportet. . . . Maneat ergo, cum plebi sublevatio quaeritur, hoc imprimis haberi fundamenti instar oportere, privatas possessiones inviolate servandas."—IDEM, Encycl. "*Graves de communi,*" Jan. 18, 1901: "*Proinde nihil sit illi* [*democratiae christianae*] *iustitia sanctius; ius potiundi possidendi iubeat esse integrum.*"

say, it must never have belonged to anybody (*res nullius*), or, if it did, have been relinquished by the former owner (*res relicta*); third, the occupant must have the intention of acquiring the object as his own and of exercising the right of ownership in future. Fourth, the act of occupancy must be such as to convey to others some intimation that proprietary possession has been taken.[3] This is usually done by some external act, *e. g.,* in the case of a movable object, keeping it and turning it into something else; in the case of soil or real estate, by the act of cultivating it, fencing it in, setting out plants on it, and so forth.

The principle that ownerless land in uncivilized countries may be occupied and thereby become private property is recognized by the law of nations.

The most common kinds of occupancy are: hunting (*venatio*), fishing (*piscatio*), and discovery (*inventio*). In civilized countries the right of hunting and fishing is regulated by positive laws and hence may not be exercised *ad libitum,* or if it is so exercised, entails the duty of

3 M. Cronin, *The Science of Ethics,* Vol. II, pp. 139 sq.—Gury, *op. cit.,* I, n. 558: *"Occupatio est realis apprehensio rerum quae nullius sunt. Est legitimus modus dominium acquirendi, modo adsint conditiones requisitae, scilicet: 1. Ut res sit dominii privati capax nec ullius sit; 2. Ut occupans velit eam suam facere et apprehendat; 3. Ut nulla lex occupationi obstet. Casus frequentiores in praxi circa hanc materiam occupationem animalium respiciunt,"*

making restitution for damage done. Hence the right of occupancy may be exercised:

α) In regard to ownerless objects (*res nullius*), *e. g.*, wild animals (*animalia fera*) which have not yet become private property by the laws regulating the chase, or by being enclosed in parks or ponds; in regard to tamed animals (*animalia mansuefacta*) that have freed themselves from control; in regard to bees and pigeons which have lost their home, but not in regard to domestic animals (*animalia domestica*). The latter never become ownerless, even when they escape from their masters, except if they go astray, in which case they are to be treated as lost objects.

β) Abandoned objects (*res derelictae*) are objects which once had an owner, but were given up by him because he no longer cared for them. This category does not include property that has been abandoned because of impending danger, or from which the owner has been separated against his will, *e. g.*, on the occasion of a conflagration or a flood; nor does it include tame animals that have gone astray. Occupation based upon the so-called *right of salvage*, therefore, is morally inadmissible.

Occupancy is "not of much practical account in modern civilized States, since all the land of the earth is now practically 'occupied.' And even such unoccupied territories as still remain, like Central Africa, have been

divided in such a way that the right of extension allowed to each competing government is fixed by special treaties or understandings. The only cases in which occupancy is still to be regarded as an operative title are those of finder, fisherman, and hunter. Their rights are . . . decided by special civil enactments in each country." [4]

γ) *Lost treasures* (*thesauri*) are movable objects of value, such as coins, gold or silver vessels, etc., which have lain hidden so long that their legitimate owners can no longer be ascertained. The finder of such treasures has a right to keep them if he is the owner of the soil. If the treasures are found by a third party, one-half belongs to the owner and the other half to the finder if the discovery was accidental, and the whole to the owner if the discovery was the result of an intentional search.[5]

If valuables are found concealed in a movable article, and the ownership cannot be established, the same principles apply. Thus if a man finds money in a piece of furniture belonging to him, it becomes his property; if the furniture belongs to another, the find should be divided half and half; if it has been purchased, the money belongs entirely to the purchaser. If the owner of a house

4 Cronin, *The Science of Ethics*, Vol. II, pp. 142 sq.—Cfr. Gury, *l. c.*, n. 559–563.—Pruner, *Lehre vom Recht*, Vol. I, pp. 283 sqq.

5 St. Alphonsus, *Theol. Mor.*, l. III, n. 602 (ed. Gaudé, II, 85).—Gury, *Comp. Theol. Mor.*, Vol. I, n. 564: *"Thesaurus ex iure Romano est summa pecuniae in terra abscondita, cuius memoria non exstat. Ex iure Gallico est res quaecunque abscondita vel infossa, quam nemo probare potest esse suam et quae casu invenitur."* Cfr. *ibid.*, n. 565–566.

destroyed by fire sells the remaining logs, and valuables are found therein, they belong to the purchaser; if a treasure is uncovered in removing the débris, it is to be divided equally between the finder and the owner of the property.[6]

δ) Finding a lost article (*res amissa*) out of the possession of its owner *per se* confers no title of ownership, but rather imposes the duty of returning the article to its rightful owner. If the owner is unknown, efforts should be made to find him, and meanwhile the lost article should be properly taken care of. If careful enquiry fails to locate the owner, the finder may, after a reasonable time, keep the lost article [7] and is not obliged to reimburse the rightful owner who appears on the scene later, provided he has not become richer

6 Göpfert, *Moraltheologie*, Vol. II, 6th ed., pp. 116 sq.

7 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 66, art. 5, ad 5.—St. Alphonsus, *Theol., Mor.*, l. III, n. 603 (ed. Gaudé, II, 86): *"Quaeritur, an inventor rei perditae domino non invento possit illam sibi retinere. Adsunt tres sententiae. . . . Tertia sententia verior et sequenda distinguit et dicit: Quando adhuc post diligentiam possibile est dominum invenire, tunc res vel pretium servari debet. Quodsi utrumque servari nequeat, res vel pretium omnino est erogandum in usus pios iuxta praesumptam voluntatem domini, qui adhuc illius rei dominium retinet, semper ac res potest in manus eius redire. E converso quando res spectatis circumstantiis longitudinis temporis vel distantiae loci vel eo, quod res non possit amplius a domino pro sua recognosci, ut accidit in nummis ordinariis, non videtur possibile, ut ad dominum redeat, tunc illa fit nullius et ideo acquiritur a primo occupante, qui illam non tenetur dare iuxta voluntatem prioris domini, quum ille impossibilitate eam recuperandi ius dominii prorsus amiserit. . . . Ratio a priori est, quia ius gentium tribuit privatis dominium rerum non ad aliud quam ut illis utantur. Hinc quando est impossibile, rem pervenire ad ipsorum usum, illa tanquam derelicta evadit nullius et redit ad primaevum ius naturae, ac ideo fit primi occupantis sine ulla obligatione."*

by his find. A finder who does not take pains to ascertain the owner of a lost article, is as bad as a possessor *malae fidei* and bound to make restitution.

The American law on the subject is briefly stated as follows by Bolles: "The finder does not take title to every article found and out of the possession of its true owner. To have even a qualified ownership the thing must be lost, and this does not happen unless possession has been lost casually and involuntarily so that the mind has no recourse to the event. A thing voluntarily laid down and forgotten is not lost within the meaning of the rule giving the finder title to lost property; and the owner of a shop, bank, or other place where the thing has been left is the proper custodian rather than the person who was the discoverer. If a lost article is found on the surface of the ground, or the floor of a shop, in the public parlor of a hotel, or near a table at an open-air place of amusement, or in the car of a railroad, it becomes, as against the loser, the property of the finder, who appropriates it regardless of the place where it was found. . . . The law regards the possession of an article which is lost as being that of the legal owner who was previously in possession, until the article is taken into the actual possession of the finder. If the finder does not know who the owner is, and there is no clue to the ownership, there is no larceny although the finder takes the goods for himself and converts them to his own use. If the finder knows who the owner is, or has a reasonable clue to the ownership, which he disregards, he is guilty of larceny." [8]

[8] *Putnam's Handy Law Book*, pp. 27 sq.—Gury, *Comp. Theol. Mor.*, Vol. I, n. 566: *"Quaeritur 4: Quid agendum, si tandem dominus*

b) *Accretion* or *production* (*accessio sive productio*) is that mode of acquiring ownership whereby something is gradually added to what is already one's own,—either by some process of nature (*accessio naturalis*), as when animals give birth to young, or real estate grows by alluvial deposits; or, secondly, by human labor (*accessio industrialis*), for instance, planting, sowing, cultivating, and so forth, or, lastly, in both ways together (*accessio mixta*). Where no law or contract provides otherwise, the rule is that *"accessorium sequitur principale."*

Whatever is sowed, planted, or raised on ground belonging to another, belongs to the owner of the soil, but he who did the sowing, planting, etc., if he acted in good faith, has a claim to indemnification. He who employs materials belonging to another for the manufacture, *e. g.*, of a piece of furniture or a picture, is the owner of what he has made, but must indemnify the owner of the material used.[9]

compareat, quando res fuit in pios usus impensa vel consumpta? Respondetur: (1) *Si res adhuc existat, domino reddi debet, quia ubicunque est, clamat domino. Inventor autem tenetur saltem cum levi incommodo procurare, ut restitui possit, v. g. admonendo possessorem vel ipsum rei dominum;* (2) *Si res consumpta fuerit adhibita antea sufficienti diligentia ad dominum inveniendum, nihil est restituendum, nisi id in quo consumens ditior factus fuerit;* (3) *Si consumpta fuerit, quin inventor necessariam adhibuerit diligentiam, totum damnum ex eius destructione proveniens reparare tenetur."*—Cfr. A. Lehmkuhl, S. J., *Theol. Mor.*, Vol. I, 11th ed., n. 1089 sqq.

9 Gury, *op. cit.*, Vol. I, n. 580 sq.: *"Accessio est modus acquirendi dominium in rem aliquam ex eo quod res illa ad nostram accedat et cum ipsa uniatur. Accessio fieri solet variis modis, scilicet:* 1. *Nativitate seu quando nobis nascitur animal conceptum de masculo ad alium pertinente. Qui habet matrem, ius habet ad omnia animalia ex ea*

From what we have said it is plain that *labor,* too, is an *original title of ownership.* By labor is meant human industry, spiritual or corporal, suitable for producing goods. As the effect follows its cause, so does the fruit of labor belong to the laborer.[10] Some writers, taking their cue from the so-called classics of political economy, have exaggerated the importance of labor by declaring it to be the only just title of ownership and reducing the occupation of ownerless property to labor as a title of ownership. This is a manifest exaggeration, for all labor deals ultimately with some pre-existing raw material. The work which a man does, gives him a right to the fruits of his labor, but the ownerless property that a

nata. Hinc axioma: Partus sequitur ventrem; 2. Alluvione seu quando vi aquarum incrementum alicui praedio paulatim accedit. Non autem alluvione repentina dominium acquiri potest; 3. Adiunctione seu quando res duae ad diversos dominos pertinentes ita coalescunt, ut separari non possint; tunc totum compositum est illius, cuius materia est praestantior sive magnitudine sive pretio in composito, sed hic alterum indemnem facere debet; 4. Specificatione seu quando ex aliena materia nova corporis species per artem conficitur. Tunc ex iure romano, si species ad priorem materiam redire non possit, res pertinet ad artificem, qui tenetur pretium materiae solvere vel damna, si quae sint, compensare; 5. Commixtione seu coniunctione duarum rerum aeque principalium ad diversos pertinentium dominos. Tunc si res mixtae possint dignosci et separari, separentur; si vero non possint dignosci, res communis erit et dividenda pro rata quantitatis propriae singulorum. Attamen dominus materiae praestantioris totum cumulum servare potest, factâ debitâ compensatione; si autem res mixtae sint omnino inseparabiles et circiter aequales, compositum pertinet ad utrumque dominum in communi et vendi debet, ut pretium dividatur; 6. Aedificatione seu quando construitur aedificium ex aliena materia in proprio fundo vel ex propria materia in fundo alieno. Generatim dominium fundi secum trahit quidquid est supra vel infra positum. Aedificium igitur est illius, cuius est solum, mediante debitâ compensatione. Idem fere dicendum est de plantatione et satione. Hinc vulgares versus: 'Quidquid plantatur, seritur vel inaedificatur, omne solo cedit, radices si tamen edit.'" Cfr. Pruner, *Lehre vom Recht,* Vol. I, pp. 293 sqq.

10 Leo XIII, Encyclical *"Rerum novarum,"* May 15, 1891; English in *The Pope and the People,* London 1912, pp. 178–219.—J. A. Ryan, *Social Reconstruction,* pp. 68 sq.

man occupies is plainly not the fruit of his labor nor of his activity in taking possession of it.[11]

Authorship, too, entails a property right in the true sense of the term. The real object of this right is not the spiritual content, but the concrete and therefore palpable form into which that content has been cast and in which it is capable of mechanical multiplication. The usual rules governing property may therefore be applied to the products of authorship. The civil laws on the subject of copyright and patents bind in conscience.[12]

READINGS.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 66, art. 2 (Rickaby, *Aquinas Ethicus,* II, pp. 53 sqq.).—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., pp. 582 sqq., 620 sqq.—St. Alphonsus, *Theol. Mor.,* l. III, n. 493–502 (ed. Gaudé, Vol. II, pp. 17 sqq.).—V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 4th ed., pp. 301 sqq.—Schaub, *Die Eigentumslehre nach Thomas von Aquin,* pp. 343 sqq.—A. Vermeersch, S. J., *Quaestiones de Iustitia,* 2nd ed., pp. 240 sqq.—H. Pesch, S. J., *Lehrbuch der Nationalökonomie,* Vol. I, 2nd ed., pp. 189 sqq.—F. Hitze, *Kapital und Arbeit und die Reorganisation der Gesellschaft,* Freiburg 1880, pp. 99–145.—Th. Meyer, S. J., *Institutiones Iuris Naturalis,* Vol. II, pp. 126–201.—Castelein, S. J., *Le Socialisme et le Droit de Propriété,* Paris 1896.—J. Kelleher, *Private Ownership,* Dublin 1911.—D. Merino, *Natural Justice and Private Property,* Eindhoven (Holland) 1922.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 113 sqq.—H. Parkinson, *A Primer of Social Science,* ed. by T. J. Shealy, S.J., N. Y. 1913, pp. 135 sqq.—V. Cathrein, S. J., *s. v.* "Property" in the *Catholic Encyclopedia,* Vol. XII.

11 J. E. Ross, *Christian Ethics,* pp. 28 sqq.—Cfr. M. Cronin, *The Science of Ethics,* Vol. II, pp. 143 sq.; Jos. Biederlack, S. J., *Die soziale Frage,* 7th ed., p. 112, n. 1. Cfr. V. Cathrein, S.J., *Moralphilosophie,* Vol. II, 5th ed., pp. 313 sqq.

12 J. E. Ross, *Christian Ethics,* p. 287.—Cathrein, *op. cit.,* II, 323.—L. Geller, *Das Gesetz betr. das Urheberrecht an Werken der Literatur, Kunst und Photographie,* Vienna 1896.—J. Kohler, *Urheberrecht an Schriftwerken und Verlagsrecht,* Stuttgart 1906.—Drone, *The Law of Property in Intellectual Productions,* N. Y. 1910.—IDEM. art. "Copyright" in the *Encyclopedia Americana,* Vol. V.—A. Tanquerey, *Synopsis Theol. Mor. et Past.,* Vol. III, pp. 18 sq., 1*–6*.

SECTION 2

THE DERIVATIVE TITLES OF OWNERSHIP

The derivative titles of ownership or secondary modes of acquiring property are: prescription, hereditary succession, and cession by means of various kinds of contracts.

1. PRESCRIPTION (*praescriptio*) or acquisition by means of prescription (*usucapio*) is the legal provision by which a man in course of time acquires an object or a right (*praescriptio acquisitiva*) or is freed from an obligation (*praescriptio liberativa sive extinctiva*). Though it has its origin in the civil law, prescription binds in the internal forum (*in foro conscientiae*) because it is necessary for the common welfare. Every man must devote proper care to the conservation of his property, and there would be no end to quarrels and lawsuits if the time for arguing and deciding them were unlimited.[1] The legal and

1 Gury, *Comp. Theol. Mor.*, Vol. I, n. 568: *"Lex humana potest vi praescriptionis dominium rerum ab uno ad alium transferre etiam sine domini consensu. Talis enim translatio valde utilis, immo moraliter necessaria est ad bonum commune societatis, siquidem requiritur ad praecavendas vel dirimendas lites, quae alioquin saepius orirentur ex incerto possessionis iure. Aliunde aequitati naturali non repugnat, quum ante omnem eventum lex constituta sit et hoc ipso omnibus et singulis parem lucri damnive sortem exhibeat."*—M. Cronin, *The Science of Ethics*, Vol. II, p. 148; C. S. Devas, *Political Economy*, pp. 490 sq.

moral conditions of prescription are contained in the following memorial verses:

Non usu capies, nisi sint tibi talia quinque:
Sit res apta, fides, titulus, possessio, tempus.

Or:

Aequa fides, iustus titulus, res non vitiosa,
Ut rem possideas, tempus quoque continuetur.

Prescription, therefore, presupposes:

a) A *res praescriptibilis, i. e.,* an object which, either by its nature or by common law, is fit to be possessed by this particular person. Hence no right of prescription can be invoked in the case of sacred things (*res sacrae*) and stolen goods (*res vitiosae*), nor can public property (*res publicae*) pass by such right into private ownership.

b) Good faith (*fides bona sive aequa*), *i. e.,* an erroneous judgment by which one prudently holds that an article in his possession is really his. Without good faith one cannot legitimately begin prescription, and if bad faith destroys good faith before the expiration of the time set by law, the prescription is interrupted. Should the civil law require prescription in the beginning only, such a provision would not avail in conscience.

c) A just title (*iustus titulus*), *i. e.,* a legal provision or external fact creating a conviction of the legitimacy of his ownership in the possessor. A legal title (*titulus verus*) is in the nature of things not necessary, for such a one actually confers the right of ownership; all that is required is an apparent title (*titulus coloratus sive existimatus*), which can reasonably be held to be a true one,

but a merely presumptive title (*vitiosus sive tantum praesumptus*) is not sufficient.[2]

d) *Possession,*[3] *i. e.,* the actual and continuous holding of an object, accompanied by the intention of retaining it as one's own.

e) The time required for prescription (*tempus requisitum*) is not determined by natural, but left to human law. This differs according to the objects in question. Moralists distinguish: *tempus breve,* a period of from three to ten years; *tempus longum,* a period of ten or twenty years; *tempus longissimum,* a period of twenty or thirty years; *tempus immemoriale,* a period the beginning of which no living person can remember, usually one hundred years, more or less. A distinction is also made between movable and immovable objects. Rights inherent in objects, movable or immovable, or the young whilst yet unborn, become subject to prescription. Once fruits are detached from their objects, they change ownership by prescription just like movable objects.[4]

It is the common teaching of moralists that prescrip-

2 Gury, *op. cit.,* n. 572: *"Titulus dicitur causa per se ad dominium transferendum sufficiens, v. g. emptio, donatio etc. Non requiritur quidem titulus verus, ut patet, secus enim possessor praescriptione non indigeret ad rem acquirendam, sed coloratus, id est, qui prae se speciem veri tituli ferat, licet in se sit falsus.—Pro praescriptione triginta annorum nullus requiritur titulus, sed sola possessio sufficit etiam in conscientia, modo adsit bona fides, seu potius tunc habetur titulus praesumptus in ipso facto possessionis placidae per tantum temporis intervallum."* Cfr. J. E. Ross, *Christian Ethics,* p. 291.

3 *Reg. Iuris in VI° Decr. Bonif. VIII,* n. 3: *"Sine possessione praescriptio non procedit."*—J. P. Gury *op. cit.,* n. 571: *"Possessio dicitur detentio rei vel exercitium iuris alicuius. Haec possessio requiritur ad praescribendum. . . . Variis autem conditionibus gaudere debet possessio. Debet enim esse: 1. Dominativa, seu haberi animo proprietarii, non vero depositarii etc.; 2. Publica, id est, non clandestina, ita ut potuerit innotescere ei, contra quem praescribitur; 3. Placida, id est, ut quemlibet violentiae actum excludat; 4. Certa, hoc est non aequivoca; 5. Continuata seu non interrupta, donec tempus requisitum compleatur."*

4 Göpfert, *Moraltheologie,* Vol. II, 7th ed., p. 125.—Cfr. Gury, *Comp. Theol. Mor.,* Vol. I, n. 573 sq.

tion of less than three years does not bind in conscience, because the legislators do not intend that it shall.[5]

2. *Bequest* is the right to take possession of the whole or part of an estate left by a deceased person (*successio hereditaria*). It is a natural right, contained in the very idea of ownership and conferred by a legally executed "last will and testament," or by an ante-mortem agreement made in conformity with the law, or by the law itself. The conditions of validity for a last will and testament are laid down by positive law.[6] If a man dies intestate, *i. e.,* without leaving a will, the State takes charge of his estate and distributes it according to the statutes, which is called intestate succession (*successio ab intestato*).[7] The *law of inheritance,* as it has been developed through many centuries, is attacked by the Communists. Catholic moralists uphold it because of its high importance for the individual citizen, for the institution of the family, and for the entire social order.

A man may dispose of his property in a twofold way, either by means of a declaration as to who shall be his heirs, called *last will* or *testament,* or by an ante-

5 Ross, *Christian Ethics,* p. 292.

6 Cathrein, *op. cit.,* II, 346 sqq.

7 Th. Meyer, S. J., *Inst. Iuris Nat.,* Vol. II, pp. 196 sqq.—St. Ambrose, *De Officiis,* l. III, c. 9, n. 58: "[*Sine*] *in supremo vitae positos suum habere iudicium, ut libere testentur quod sentiunt.*" (Migne, *P. L.,* XVI, 192). Cfr. Périn, *Christliche Politik,* pp. 200 sqq.; Schaub, *Die Eigentumslehre nach Thomas von Aquin,* pp. 374 sqq.

mortem agreement with his heirs, called *testamentary contract.* If this contract involves only part of an estate, it is called *donatio mortis causa.* This must be distinguished from *donatio inter vivos,* by which a man gives away part of his property during his life-time, either unconditionally or on condition that he receive an income from it till death.[8]

Per se no one is obliged to make a will because the law provides sufficiently for the distribution of the property of those who die intestate; but circumstances may make it a duty. This is the case:

a) When there are debts to be paid which will probably not be settled unless mentioned in the last will or testament;

b) If there is restitution to be made, which the heirs will presumably not make unless they are held to do so by the terms of the will;

c) If the testator foresees serious quarrels in connection with the division of his property, and can easily obviate them by means of a will;

d) If the merits of his children differ, so that one is in justice entitled to a larger share of the estate than the others, or if one of them is likely to squander or misuse the property left to him;

e) If the guardianship of an immature child would be entrusted to an unreliable person, unless due provision against such a mistake is made by will.

It is proper, too, that the testator should provide for the repose of his soul by appropriate directions in his will. In this sense confessors may and should admonish the dying to attend to their temporal affairs and provide for the repose of their souls, without, however,

8 Cathrein, *Moralphilosophie,* Vol. II, 5th ed., p. 340.

exercising any undue influence or, what would be even worse, taking selfish advantage of the situation.[9]

The Code expressly declares that "whoever is able, by natural and ecclesiastical law, to dispose freely of his property, can devote it to pious causes (*ad causas pias*), either by donation while he is still alive, or by last will and testament (*sive per actum inter vivos sive per actum mortis causa*)." [10]

The Code also says that in the making of a will by which the Church is benefitted, all legal formalities should, if possible, be observed, and that, if these formalities have been omitted, the heirs should nevertheless carry out the wishes of the testator.[11]

The executors of all pious bequests, testamentary and otherwise, are the Ordinaries, who are exhorted to see to it that these bequests are faithfully carried out; clauses attached to a will contrary to this right of the Ordinaries are declared null and void.[12]

Priests have full liberty of disposing of their belongings, but they should remember the Tridentine decree [13] which admonishes them to will the *bona superflua* derived from ecclesiastical benefices either to the Church or to the poor. This obligation, however, is merely one of obedience (*ex lege ecclesiastica*), not of justice (*ex iustitia*).[14]

Aside from the minimum established by law, parents may give a larger share of the property of which they have free disposal to one child than to another, but should do so only for a just cause, such as: special merits, poverty of one and unworthiness of the other, etc. Where

9 Göpfert, *Moraltheol.*, Vol. II, p. 136.

10 *C. I. C.*, can. 1513, § 1.

11 Can. 1513, § 2.

12 Can. 1515.

13 *Conc. Trid.*, Sess. XXV, c. 1, *De Ref.*

14 *Conc. Vienn. a. 1858*, t. 7, c. 5; *Conc. Prag. a. 1860*, t. 8, B, c. 4 (*Collectio Lacensis*, Vol. V, 217, 593).

no just reason for discrimination exists, charity and prudence counsel equal distribution, because an unequal division easily causes dissatisfaction and quarrelling. Brothers and sisters who are in real need must (*sub gravi*) be preferred to other poor persons, and even to pious causes, at least to the extent that their immediate needs are satisfied. Towards other relatives there is indeed an obligation, but it is not grave. Where the law does not protect the interest of man or wife, there is a certain natural obligation of giving him or her at least a portion of the testator's property, or the usufruct thereof. Noldin,[15] following De Lugo, holds that this obligation indirectly touches the property itself, and therefore binds the heirs.[16]

The portion due to a deceased child may not be appropriated by the brothers and sisters, but, unless the civil law provides otherwise, should be given at least in part to the poor, for Christ, who, according to St. Augustine,[17] is a member of every Catholic family, has destined His share for the poor. Some monasteries have the beautiful custom of leaving the place of a deceased member vacant for a while and giving his portion of food and clothing to beggars.

3. Cession (*traditio*) is the transfer to another by mutual agreement of ownership in an object. This brings us to the discussion of contracts.

READINGS.—Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., pp. 609 sqq., 706 sqq.—St. Alphonsus, *Theol. Mor.*, l. III, n. 503–517.—F. X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 531 sqq.—J. Schwane, *Die Gerechtigkeit*, pp. 30 sqq.—Th. Meyer, S. J., *Inst. Iuris Nat.*, Vol. II, pp. 192 sqq.

15 *Summa Theol. Mor.*, Vol. II, p. 574; cfr. Th. Meyer, S. J., *Inst. Iuris Nat.*, Vol. II, p. 194.

16 Cfr. Göpfert, *Moraltheol.*, Vol. I, p. 140.

17 *Serm.*, 86 (*al.* 43 *De Diversis*), n. 11–13 (Migne, *P. L.*, XXXVIII, 528).

SECTION 3

NATURE AND DIVISION OF CONTRACTS

1. DEFINITION.—A contract (*contractus, pactum*) is a mutual agreement between two or more parties, recognized by law as creating an obligation to do or to omit a particular thing, and productive of a permanent claim in one or both parties.

2. CONDITIONS NECESSARY FOR VALIDITY.—To be morally valid and binding, a contract must comply with certain conditions, both on the part of the contracting parties and as to matter and form. With due regard to the properties which belong to a contract by natural law, positive legislation may and does regulate the details with regard to conditions as well as concerning different forms of contracts, in conformity with natural justice and the common welfare.

a) The *parties* to a contract (*subiectum contractus, contrahentes, paciscentes*) must be naturally and legally capable of entering into an agreement, and they must enjoy the use of reason and freedom of action, because a contract is a human act.

b) The *matter* of a contract (*materia sive obiectum*) must be something morally and physically fit to form the object of an agreement.[1] Hence an agreement which violates an inalienable right of one of the contracting parties, or of a third party, or the laws of morality, or which demands something impossible, is immoral and therefore invalid. If, however, a man has performed an evil deed in comformity with a contract into which he has entered, he may, without committing an additional sin, receive and keep the reward due to him, though it would be better to devote it to some good purpose (*ad pias causas*).[2]

An immoral contract is *per se* invalid and binds no one. But since the matter or object may be separated

1 J. P. Gury, S. J., *Comp. Theol. Mor.*, Vol. I, n. 726: *"Contractus est conventio per quam unus aut plures se obligant erga unum aut plures alios ad aliquid dandum, faciendum vel omittendum." Idem, ibid.*, n. 727: *"Materia contractus generatim sunt res et facta seu ea omnia, quae sub hominis dominio cadere possunt et de quibus contrahentes habent plenum dominium proprietatis et liberam administrationem. Materia contractus variis conditionibus gaudere debet, scilicet, debet esse possibilis, existens, honesta, propria contrahentis, certa. 1. Possibilis, tum physice tum moraliter, quia ad impossibile nemo obligari potest; 2. Existens vel in re vel saltem in spe certa seu probabiliter exstitura, secus nullum ius in illam haberi posset; 3. Honesta et licita, id est, nullo iure prohibita, quia nequit dari obligatio ad rem inhonestam et prohibitam, ut patet, 4. Propria contrahentis, ut patet ex definitione, nemo enim potest ad alium transferre ius quod ipse non habet; 5. Certa et determinata, sive in individuo sive in quantitate et qualitate, secus enim illusorius foret contractus."* Cfr. Lehmkuhl, S. J., *Theol. Mor.*, Vol. I, 11th ed., n. 1240 sqq.

2 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 32, art. 7, ad 2; qu. 62, art. 5, ad 2; qu. 87, art. 2, ad 2.—St. Alphonsus, *Theol. Mor.*, l. III, n. 712 (ed. Gaudé, II, 176).—J. P. Gury, S. J., *Comp. Theol. Mor.*, Vol. I, n. 730.—*S. Poenit., d. d. 23 Apr. 1822: "Mulier poenitens non cogenda, sed hortanda est, ut pretium meretricii iuxta prudentis confessarii iudicium eroget in usus pios."*

from the motive, one who has demanded and received an immoral act from another, may be obligated to perform his part of the bargain, provided the act demanded of him is possible and honorable. A man who hires another to set fire to the house of a third, enters into a contract which is *per se* invalid. If the hireling lives up to his part of the agreement, is the hirer obliged to pay him the promised sum, and may the hireling keep the money? The answer is yes, regardless of what may be said of the disproportion existing between the sin and its reward. The reward is paid not on account of the sin involved in the undertaking, but on account of the material performance, which is not in itself sinful, since the malice lies not in the deed itself, but in its form and motive. The reward is given for the labor performed, for the care involved in the choice of the proper means, and for the risk assumed in the undertaking. That the hireling is thereby encouraged to commit other similar crimes aggravates the sinful character of the contract, but is not a sufficient reason for withholding the contractual reward, to which he has a right. He may retain the wage for his labor, even if that wage exceeds the one usually paid for similar material labors, because the risk involved is exceptional. From the moral point of view, money thus received is rated as ill-gotten gain, and whatever portion of it is not needed for the sustentation of life, is subject to restitution, though it need not be given back to the person from whom it was received, but may be donated to charity.[3]

If a man has made a present to a woman with the intention of seducing her, she may keep the gift, even though she did not commit the sin demanded of her. The

[3] F. X. Linsenmann, *Lehrbuch der Moraltheol.*, pp. 533 sq.

reason is that there was no *pactum de peccato patrando.*[4] But, as Göpfert observes, "the acceptance or retention of such a present may involve the sin of scandal, namely, in so far as the donor may thereby be encouraged in his evil purpose by the hope of fulfilment." [5]

c) Formally, a contract demands a mutual, serious, and perfectly free internal consent (*consensus internus,*) manifested by some external sign or signs (*consensus externus*). Extremely vague terms, a lack of express acceptance of the promise given, or any essential error with regard to the object or nature of a contract, render that contract invalid, because in such cases there can be no true agreement of the will between the parties concerned. A non-essential error, on the other hand (*e. g.,* concerning an accidental quality of the matter), does not affect the validity of the contract, unless the contract was caused by this very mistake. If this was the case, the contract, if it was a gratuitous one, is null and void because gratuitous contracts presuppose free consent. Grave fear, unjustly caused, so long as it does not deprive the subject of the power of clear thinking, does not, *ex iure naturali,* render a con-

4 Gury, *op. cit.*, Vol. I, n. 731: *"Quaeritur, si vir aliquid mulieri ad eam seducendam donaverit, an illa denegato consensu rem retinere possit? Resp. affirmative, quia nullum intercessit pactum de peccato patrando et proinde donatio ut omnino liberalis habenda est."* Cfr. Lehmkuhl, *Theol. Mor.*, Vol. I, n. 1248–1251.

5 F. A. Göpfert, *Moraltheologie,* Vol. II, p. 152.—Cfr. J. Kelleher, "Immoral Contracts," in the *Irish Theol. Quarterly,* Vol. IV, (1909), No. 15.

tract invalid, but gives the party who acted under the influence of fear the right to renege the obligations incurred.[6] Force, which deprives one of the contracting parties of his liberty, renders a contract null. A signature obtained by force is, therefore, legally worthless and does not bind the signer in conscience.

The so-called gratuitous contracts (*vide* Sect. 4, *infra*) are not affected in their validity by a non-essential or an accidental error, for consent to its substance is sufficient to make a contract valid. Accidental errors easily occur in legal affairs, and it would give rise to numerous inconveniences if contracts were invalid or could be declared void because of a non-essential error. If, however, the error was substantial and caused by intentional deceit on the part of one of the contracting parties, and the other party was induced by it to make the contract, the deceived party has the right, upon discovery of the error, to rescind the agreement. Some authorities regard the contract as invalid in such a case. Most others consider it valid as long as the deceived party does not demand its dissolution. The latter, consequently, has it within his power either to let the contract stand, if he wishes to do so after he has discovered the error, or to have it revoked, *i. e.*, to demand of the other party that it be regarded as null and void.[7]

Slight fear [8] does not by natural law invalidate a contract, for if it did, every contract would be doubtful, as

6 J. P. Gury, S. J., *Comp. Theol. Mor.*, Vol. I, n. 737, 740–747; J. E. Ross, *Christian Ethics*, p. 297; M. Cronin, *The Science of Ethics*, Vol. II, pp. 305 sqq.

7 V. Cathrein, S. J., *Moralphilosophie*, Vol. II, 5th ed., pp. 355 sq.

8 See this *Handbook*, Vol. I, p. 116.

there are people who seem to be in a constant state of dread and can be induced to make a promise or sign an agreement only if inspired by fear or placed under moral pressure. Slight fear, even if unjustly inspired, does not destroy freedom of decision. On the contrary, fear often makes a man cautious and teaches him to give special attention to the business in hand. Hence it would not be right to say that slight fear invalidates gratuitous, or even onerous contracts (the latter if fear was the principal reason for, or the occasion of, making the contract) *in foro conscientiae,* but such fear may be a reason for demanding the dissolution of an otherwise valid contract.

3. Division of Contracts.—Contracts are commonly divided as follows:

a) With regard to the *effects* or the *obligation* involved (α)—into unilateral (*unilaterales*) and bilateral (*bilaterales*), according as they give rise to an obligation of justice in one of the parties only or in both; (β) into gratuitous (*gratuiti*) and onerous contracts (*onerosi*), according as one of the contracting parties receives a utility without a corresponding burden, or the burden is distributed between both; (γ) insurance or social contracts, which aim not at profit, but at securing rights of property.[9]

b) Distinguished according to *form,* contracts are divided into (α) solemn, (β) public, (γ) private, depending upon the legal formalities by which they are accompanied.

9 F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 535 sq.

c) With reference to their *object,* contracts may be ecclesiastical or civil, and they may or may not affect property rights.

d) Distinguished according to the law by which they bind, contracts are divided into natural contracts and contracts of civil obligation.

Other divisions are of minor importance.

The division of contracts evolved by the casuists, says Linsenmann, does not flow from their internal nature. Some of them are merely the product of a legal fiction, which cannot be carried to its logical conclusions in the ulterior development of the law. The distinction between unilateral and bilateral contracts, for instance, is opposed to the very nature of contracts. The distinction between gratuitous and onerous contracts is purely extrinsic and not quite accurate. In Moral Theology, at least, every contract is not only bilateral, but also onerous, though the consideration involved does not always consist in a definite, material *quid pro quo* enforceable under the law, but at times is purely ethical and ideal. But even in regard to the material *quid pro quo* jurists and casuists cannot determine sharply which species of contracts naturally postulates it and which does not. It does not lie in the nature of a loan contract that it is sometimes (*commodatum* and *mutuum*) rated as gratuitous and sometimes (*locatio, conductio,* etc.) as onerous.[10]

Readings.—Th. Meyer, S.J., *Inst. Iuris Nat.,* Vol. II, pp. 210 sqq.—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., pp. 631 sqq. —St. Alphonsus, *Theol. Mor.,* l. III, n. 707 sqq. (ed. Gaudé, II, 174).—J. Schwane, *Die theologische Lehre über die Verträge,* Münster i. W., 1871, pp. 8 sqq.—J. E. Pruner, *Lehre vom Recht,*

10 Linsenmann, *op. cit.,* p. 536.

Vol. I, pp. 336 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheol.*, pp. 533 sqq.—V. Cathrein, S.J., *Moralphilosophie*, Vol. II, 5th ed., pp. 352 sqq.—A. Vermeersch, S.J., *Quaestiones de Iustitia*, 2nd ed., pp. 363 sqq.—M. Cronin, *The Science of Ethics*, Vol. II, pp. 298 sqq.—J. E. Ross, C.S.P., *Christian Ethics*, pp. 294 sqq.—T. Slater, S.J., in the *Catholic Encyclopedia*, Vol. IV, pp. 332 sq.

SECTION 4

THE SO-CALLED GRATUITOUS CONTRACTS

Gratuitous contracts, so called, are: promises, gifts, deposits, loans, and the agreements known in Latin as *mutua,* for which we have no precise equivalent in English.

1. A *promise* (*promissio*) is merely a free and sincere declaration of one's willingness to do something gratuitously for another. It is, therefore, not strictly a contract, but rather a preliminary to a contract. English law will not enforce a simple promise for which no valuable consideration was given and which was not entered into by deed,[1] but in the forum of conscience a promise imposes an obligation, either of fidelity or of justice, as the intention may be.

"There is a dispute among theologians concerning the kind and quality of the obligation imposed by a simple promise. An onerous promise for which consideration is given by the other party, and mutual promises bind in justice, and consequently under pain of grievous sin in serious matter. Similarly, where the promisee has been led to rely on a promise, and would suffer serious loss

1 T. Slater, S. J., *A Manual of Moral Theology,* Vol. I, p. 496.

unless the promise were fulfilled, the promisor will be under a grave obligation to fulfil it. Apart from these circumstances the obligation of a simple promise will depend on the intention of the promisor. If he intended to give the promisee a strict right to what was promised, he will be bound in justice; otherwise he will only be bound by the virtue of fidelity, which is a self-regarding virtue, and imposes an obligation to make the fact agree with one's word. The virtue of fidelity of itself only binds under pain of venial sin. A promise will cease to bind if some event takes place or becomes known subsequently which would have prevented the promisor from making the promise if it had happened or been known beforehand. For a simple promise is essentially conditional; the promisor binds himself to do something under certain suppositions and in certain circumstances; if those suppositions are not verified, or if the circumstances become changed, the promise no longer obliges. All the more will a promise cease to bind if what was promised becomes unlawful and wrong, or useless, or impossible." [2]

2. A *gift* (*donatio*) is a contract by which a man (*donator*) gratuitously transfers an object or a right to another (*donatarius*). For a gift to be valid, the donor must be free to give away the object or right in question, and the receiver (*donatarius*) must be free to accept it. A gift is called *inter vivos* if the ownership in the property is transferred by the donor while he is still alive; it is called *mortis causa* if made in view

2 *Op. cit.*, p. 497. Cfr. M. Cronin, *The Science of Ethics*, Vol. II, p. 313.

of death, *i. e.,* with the intention that the *donatarius* shall receive the property only after the donor's demise.[3] The difference between these two kinds of gifts lies in this, that a *donatio mortis causa* may be revoked at any time, and becomes void with or without a cause, if the *donatarius* dies before the donor, unless indeed the latter expressly ordained the contrary. A *donatio inter vivos,* on the contrary, can be voided only for definite reasons determined by law, *e. g.,* if an heir is born to the donor, if the beneficiary proves grossly ungrateful, or if the donor becomes poor and needy without any fault of his.[4] Gifts of immovable objects or movable ones of considerable value must be legally approved to be valid. Catholic Moral Theology demands of the donor that he shall not injure his family or creditors nor give his property away to unworthy persons in order to gratify his own passion or that of another; and of the beneficiary, that he shall not obtain a gift by deception, intrigue,

3 J. P. Gury, S. J., *Comp. Theol. Mor.,* Vol. I, n. 761: *"Donatio in genere est concessio gratuita alicuius rei. Duobus praecipue modis fieri potest, nempe inter vivos et per testamentum." Ibid.,* n. 770: *"Donatio inter vivos est actus seu contractus quo donator privat se actualiter et modo irrevocabili re aliqua in favorem donatarii acceptantis." Ibid.,* n. 797: *"Donatio mortis causa ea est quae intuitu mortis fit; est ex natura sua necessario revocabilis. Haec de iure communi. Valet donatio mortis causa, modo debitis vestiatur conditionibus, scilicet: 1. Fieri debet intuitu mortis, secus donatio inter vivos censeretur; 2. Acceptari debet ante mortem donatoris ab ipso donatario; 3. Si donatarius praemoriatur, ipso facto revocatur nec ad eius heredes transit."*

4 Gury, *ibid.,* I, n. 773; Göpfert, *Moraltheol.,* Vol. I, pp. 162 sqq.

or other undue influence, that he shall refuse to accept a donation unjustly made, and that he shall show himself duly grateful for gifts, both in word and deed.[5] The civil law may add other conditions, for instance, that there should be some public record of the transaction.

In most countries gifts are hedged about with many legal provisions intended, first, to exclude undue influences and, second, to prevent donations to persons and institutions which the State does not wish to be so favored. When the lawmakers really have in view the common welfare, these limitations are wholesome. There may be undue weakness shown in giving and there are always persons ready to exploit such a defect of character for their own benefit. In view of this fact the public authorities have a right to protect the weak in their property and to limit extravagance in the form of immoderate and unjust giving. Take the case of a man who disinherits his wife and children and leaves his property to a concubine. Here surely the law ought to interfere. Christian moral teaching, therefore, obliges us to respect the civil laws in this regard. No gift should be made except for some adequate reason, and the beneficiary should realize that he assumes certain obligations with the gift.[6]

3. A *deposit* is a contract by which a man (*deponens*) entrusts to another (*depositarius*) an object (*depositum*), to be guarded for him until he demands it back.[7]

5 Col. III, 15; 1 Thess. V, 18; 1 Tim. II, 1; cfr. Prov. XVII, 13. —J. E. Ross, *Christian Ethics*, p. 300.

6 Linsenmann, *Moraltheol.*, pp. 548 sq.

7 Gury, *Comp. Theol. Mor.*, Vol. I, n. 806: *"Depositum est contrac-*

a) The *depositary* is bound in conscience to take reasonable care of the object entrusted to him. He is not allowed to make use of it or to appropriate its fruits; he must return the object to its lawful owner upon demand, and make restitution for any damage or injury it may have suffered *ex dolo et culpâ latâ seu levi* while in his care. If the object entrusted has decreased in value by accident, the depositary is not responsible for the damage, for *"casum sentit dominus."* If the damage was done through his fault, the question of indemnification must be decided by the terms of the contract. If there was no definite agreement, the depositary is responsible not only for grave neglect on his own part, but also for moderate neglect, provided he receives some compensation for the custody of the object or has freely offered his services. If he has used the entrusted object without the owner's permission, he is responsible for all damage or depreciation, even though it may have occurred accidentally. If the deposit turns out to be ill-gotten, or the depositary has a just claim against the owner, or reason to fear that the owner will abuse the object, he is not bound to give it back.[8]

tus quo res custodienda committitur et accipitur in integrum restituenda, quando deponenti libuerit."

8 St. Ambrose, *De Offic.*, l. II, c. 29, n. 149: *"Servanda est depositis fides, adhibenda diligentia."* (Migne, *P. L.*, XVI, 143).—Gury, *Comp. Theol. Mor.*, Vol. I, n. 806:

When a deposited object (*depositum*) must be restored to its owner, depends upon the will of the latter, even in those cases where a time limit is fixed in the contract, because the nature of this sort of contract makes it necessary to interpret its provisions in favor of the owner. If the place to which the object is to be returned is determined in the contract, this stipulation should be observed by the depositary, but the depositor must pay the costs of transportation. If the depositary changes his place of residence, he is not bound to take the deposit with him, but may leave it in custody of a court, if the depositor will not send for it after being duly notified, or he may, in this latter case, take the object along with him at the expense of the owner.

b) The duties of the *deponens* or lender flow from the nature of the contract. He is above

"Obligationes depositarii: 1. Tenetur rem depositam servare ac custodire ea cura et diligentia, quam homines diligentes adhibere solent in re simili ac propria conservanda; hanc enim rei traditae custodiam suscepit. Si res deposita ex dolo vel eius incuria theologice culpabili pereat, ad restitutionem tenetur; 2. Nihil exigere potest pro rei custodia, nisi dominus ei mercedem expresse promiserit, quia depositum purum vertitur in gratiam solius deponentis. Quodsi pactum de mercede intervenerit, tunc depositum transit in locationem operae, scilicet in rem depositam custodiendam; 3. Vetatur uti re deposita sine consensu domini expresso vel tacito vel saltem prudenter praesumpto, non enim uti licet re aliena inconsulto domino; 4. Tenetur rem depositam petenti statim reddere, nam secus rem alienam haberet invito rationabiliter domino. Excipe, nisi deponens eam repetat in suum vel alienum damnum, vel nisi res sit furtiva et dominus eam repetat, vel etiam nisi depositarius iustam habeat causam compensationis. Res deposita debet eo statu reddi, quo reperitur tempore restitutionis cum fructibus ex ea perceptis. Si tamen culpa depositarii deterior facta fuerit, hic ad damnum reparandum obligatur."

all obligated to receive back the deposit when the depositary wishes to return it for some good reason, for instance, because he can no longer keep it without danger to himself. When a compensation has been agreed upon between the parties, the owner need not pay it in full if the object is returned before the term agreed upon in the contract, but may make reasonable deductions, and eventually charge the depositary with the cost of entrusting the object to another. But he must indemnify the depositary for all necessary expenses incurred and for whatever damage the latter may suffer through the keeping, preservation, or rescue of the deposit, and likewise for accidental damage. In case of danger the depositary may save his own property first.

c) A special kind of deposit is *sequestration,* which is defined as the deposit of property made with a third person either by agreement (*sequestrum conventionale*) or by judicial order (*s. iudiciarium*), by parties having claims against such property, till the question of ownership can be decided. The person with whom such property is deposited is called sequester, umpire, or referee. Sequestration is an act of public administration. If sequestration is the result of a mutual agreement between the parties concerned, it may be either gratuitous or not; in the last-mentioned case, the consideration to be paid

the sequester should be determined by the terms of the contract. If it is gratuitous, it is subject to the same rules as a deposit and is not rescinded except by mutual consent of the parties or by a legal action. In judicial sequestration the referee or umpire is bound to take good care of the property entrusted to him and the claimants must pay him the fee fixed by law.[9]

Deposits now-a-days are mostly entrusted to *banks*. If a deposit consists of stocks or bonds or other valuable papers, the bank is *per se* not allowed to sell them or use them as collateral, particularly when there is danger that the owner may sustain losses through such action. Deposited money may, however, be loaned out or invested with due precautions, provided the owner is given adequate guarantees that he can withdraw his funds within a reasonable time after giving notice.

If a deposit is in danger, and the same danger threatens the depositary's own property, the latter may rescue his own property first. If the deposit is much more valuable than one's own property, it must be rescued first and indemnification can be claimed for one's own loss. If

9 Gury, *Comp. Theol. Mor.*, Vol. I, n. 807: *"Sequestrum est depositi species, quo res controversa deponitur ad tertium, ut post sententiam iudicis vel arbitri vincenti tradatur. Duplex distinguitur sequestrum; conventionale, quod fit mutuâ contendentium conventione, et iudiciarium, quod sententiâ iudicis decernitur. De utroque satis erit innuere: 1. Sequestri tam conventionalis quam iudiciarii obiectum potest esse res mobilis vel immobilis: 2. Sequestrum conventionale potest esse non gratuitum et tunc est operae conductio istiusque contractus legibus subicitur. Si vero gratuitum sit, iisdem regulis subiacet ac depositum. Non resolvitur tamen, nisi mutuus partium consensus vel legalis causa superveniat; 3. In sequestro iudiciario custos curam boni patris-familiae gerere debet, committens vero custodiae mercedem iure statutam depositario solvere tenetur. Sic de iure naturali et positivo."*

however, the terms of the contract favor the depositary, he must rescue the property of the owner without claim to indemnification.

The same rule applies to loan contracts, with this modification that the terms of such contracts are always supposed to favor the borrower, who therefore has a greater responsibility.[10]

A somewhat different sort of contract is that entered into by a guest who entrusts his valuables to a *hotel* or *innkeeper*. In most countries the civil law obliges the hotel keeper to take good care of the valuables entrusted to him and compels him to make restitution even in some cases where the natural law does not impose this obligation.[11]

4. A *loan* (*commodatum*) is a contract by which something is granted to another for his temporary use, on condition that it be restored to the owner in its integrity after the term specified. If the contract contains a clause stipulating that the object loaned may be demanded back by the owner at any time, it is called *precarium*.

In making a contract of this kind the lender (*commodans*) must reveal the defects of the object or commodity loaned; he is not allowed to shorten the term of the contract arbitrarily, and must defray extraordinary expenses and losses caused by accidents.

10 Göpfert, *Moraltheologie*, Vol. II, p. 166.—Cfr. St. Alphonsus, *Theol. Mor.*, l. III, n. 752 (ed. Gaudé, II, 200).

11 J. Schwane, *Die theol. Lehre über die Verträge*, p. 79; V. Cathrein, S. J., *Moralphilosophie*, Vol. II, 4th ed., p. 348.

The person to whom a commodity is loaned for use only, not for consumption, is called *commodatarius*. He is in duty bound to take good care of the commodity; he may not use it in a manner opposed to the terms of the contract; he has no right to lend it to others, and is responsible for the loss occasioned by its use or preservation, for instance, the feed of a horse or cow; he must further repair all damage arising to the object entrusted to him through his own fault, even though his fault be of the slightest (*ex culpa levissima*).[12]

Lending to others an object which we expect to have restored to us in kind, is a practice which gives rise to much dissatisfaction and quarrelling, and therefore it is undoubtedly an indication of economic progress that objects which used to be loaned gratuitously are now sold or rented at a reasonable price. In trying to abolish the loan in favor of the lease or sales contract, says Bishop Linsenmann, we no more mean to discourage acts of charity than when we advocate the practice of furnishing the poor with occasions for work rather than doling out alms to them. Lending in the sense of the Scholastic *commodatum* will perhaps never die out as a form of friendship and good nature among neighbors; as a social

12 Gury, *Comp. Theol. Mor.*, Vol. I, n. 803: "*Commodatum est contractus quo res ad solum usum gratis conceditur certo pro tempore cum onere rem eandem in sua individuali forma restituendi. Precarium, quod commodato affine est, definitur: Contractus, quo alicui petenti conceditur usus rei alicuius ad concedentis voluntatem revocabilis. Differt tamen precarium a commodato in eo, quod ad concedentis arbitrium revocabile est.*" —Cfr. Schwane, *op. cit.*, pp. 79 sqq.; Göpfert, Vol. II, p. 165.

function in the strict sense it no longer has importance except in the form practiced by public institutions, *e. g.*, libraries, art collections, etc. Here, too, the original character of the contract as a kind of charity is almost completely obliterated. There is nothing in the nature of the loan contract which would prevent charging a fee for the use of books in a *public library,* nor is there anything unreasonable in the demand that the lender be held responsible for damage done by accident or by *force majeure,* to articles loaned to him, provided, of course, he is aware of his liability.[13]

5. We now come to the contract that was called *mutuum* in Roman and Canon Law. It was a gratuitous loan of a fungible commodity made on condition that after a certain period of time the borrower (*mutuatarius, debitor*) should restore to the lender (*mutuans sive mutuator vel creditor*) an equal quantity of the commodity and of the same quality. A fungible commodity is one intended for immediate consumption, *e. g.*, food and drink. Such commodities are called fungible (*res fungibiles sive primo usu consumptibiles*) because any amount of them is interchangeable with the same quantity and quality of the same commodity (*mutuâ vice funguntur*). Since use and consumption cannot be separated in such commodities, that is to say, since the commodity loaned is a *res infructuosa* or sterile,

13 Linsenmann, *Lehrbuch der Moraltheol.*, pp. 551 sq.

no more can justly be exacted in return than was originally lent.[14]

"Money considered as a medium of exchange is a fungible; it is a commodity whose use is exhausted for the owner of it when he has paid it in exchange for value received. It is not, under this respect, a commodity which is susceptible of repeated use by the same owner. Money then may be the matter of a contract of loan for consumption, and if a sum of money be thus lent, justice requires that an equal sum be returned at the end of the term, and justice will not allow a greater sum to be exacted in return. For the whole value of the sum of money is the value it has for making exchanges, the value which it has in the first expenditure of it; and if, over and above the sum lent, a further sum were demanded for the use of the money, the same thing would be charged for twice over. An equal sum is due in return for the use of the money; a further sum would be a second payment for the same use. Thus when money is regarded merely as a medium of exchange, a sin against justice is committed if an additional sum is exacted for a loan; it is called *usury,* money unduly exacted for the use of money. This is the reasoning of Aquinas,[15] and it seems as cogent to-day as it was in the thirteenth century."[16]

14 T. Slater, S. J., *Manual of Moral Theology,* Vol. I, p. 512.—J. E. Ross, C. S. P., *Christian Ethics,* p. 303.—J. P. Gury, *op. cit.,* Vol. I, n. 810: *"Mutuum est contractus, quo res primo usu consumptibilis alteri traditur cum obligatione rem similem in eadem specie et bonitate statuto tempore reddendi. Hinc mutuum differt a commodato, locato et deposito: 1. Quia in mutuo res debet esse primo usu consumptibilis, secus in aliis; 2. Quia res non individuo, sed in specie tantum eadem reddenda est; 3. Quia in mutuo transfertur rei dominium et non in aliis; 4. Quia in mutuo res perit accipienti, in ceteris tradenti."*

15 *Summa Theol.,* 2a 2ae, qu. 78, art. 1; cfr. Lehmkuhl, *Theol. Mor.,* Vol. I, 11th ed., n. 1295 sqq.

16 Slater, *A Manual of Moral Theol.,* I, 514 sq.—Cfr. *Conc. Vi-*

By this argument St. Thomas defended the doctrine concerning *usury* which the Fathers and Doctors had drawn from Holy Scripture and tradition. Benedict XIV sums up the constant teaching of the Church on usury as follows: "The species of sin which is called usury, and which has its proper seat and place in the contract called *mutuum,* consists in this that, from a loan made for consumption (which of its own nature requires that only so much should be returned as was received), the lender desires more to be returned to him than was received, and therefore contends that some gain, over and above the principal, is due him merely on account of the loan. . . . Every sort of gain of this kind, therefore, which exceeds the loan, is illicit and usurious." [17]

It can be shown, however, that money is no longer

enenn., a. 1311: *"Si quis in illum errorem inciderit, ut pertinaciter affirmare praesumat, exercere usuras non esse peccatum, decernimus eum velut haereticum puniendum."* (Denzinger-Bannwart, n. 479). *Conc. Lat. V: "Ea propria est usurarum interpretatio, quando videlicet ex usu rei, quae non germinat, nullo labore, nullo sumpto nullove periculo lucrum fetusque conquiri studetur."* (*Ibid.,* n. 623). —*Prop. damn. ab Alex. VII,* n. 42: *"Licitum est mutuanti, aliquid ultra sortem exigere, si se obliget ad non repetendam sortem usque ad certum tempus."* (*Ibid.,* n. 1143).—*Prop. damn. sub Innocentio XI,* n. 41: *"Quum numerata pecunia pretiosior sit numeranda et nullus sit, qui non maioris faciat pecuniam praesentem quam futuram, potest creditor aliquid ultra sortem a mutuatario exigere et eo titulo ab usura excusari."*—*Ibid.,* n. 42: *"Usura non est, dum ultra sortem aliquid exigitur tanquam ex benevolentia et gratitudine debitum, sed solum si exigatur tanquam ex iustitia debitum."* (Denzinger-Bannwart, n. 1191 sq.)

17 Benedict XIV, Encyclical *"Vix pervenit" ad Italiae episcopos de usura d. d.* 1. Nov. 1745, n. 1: *"Peccati genus illud quod usura vocatur quodque in contractu mutui propriam suam sedem et locum habet, in eo repositum est, quod quis ex ipsomet mutuo (quod suapte natura tantumdem dumtaxat reddi postulat, quantum receptum est) plus sibi reddi velit quam est receptum, ideoque ultra sortem lucrum aliquod ipsius ratione mutui sibi deberi contendat. Omne propterea huiusmodi lucrum, quod sortem superet, illicitum et usurarium est."* (*Ibid.,* n. 1475; cfr. S. Alph., *Theol. Mor.,* l. IV, n. 758 sqq.)

a mere means of exchange for articles of consumption and a measure of their value, but by its very nature has become a *res fructuosa, i. e.,* a thing which, over and above its consumptive value has a use value which may be considered as its fruit (*fructus rei*), and hence a loan is no longer strictly a contract of the kind known as *mutuum,* and interest may be asked and taken for its use. Of this subject we shall treat more in detail in the next section, pp. 297 sqq.

Readings.—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., pp. 639 sqq.—St. Alphonsus, *Theol. Mor.,* l. III, n. 720 sqq. (ed. Gaudé, II, 185).—J. Schwane, *Die theol. Lehre über die Verträge,* Münster i. W., 1871, pp. 56 sqq.—J. E. Pruner, *Lehre vom Recht,* Vol. I, pp. 420 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 547 sqq.—V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 358 sqq.—A. Lehmkuhl, S. J., *Theol. Mor.,* Vol. I, 11th ed., n. 1285 sqq.—M. Cronin, *The Science of Ethics,* pp. 328 sqq.—J. E. Ross, C. S. P., *Christian Ethics,* pp. 302 sqq.

Literature on the problem of interest-taking, infra, p. 314.

SECTION 5

THE SO-CALLED ONEROUS CONTRACTS

An onerous contract is one that confers advantages on both contracting parties.

The chief kinds of onerous contracts are: Exchange, lease, purchase and sale, pension (*census*), bill of exchange, and loaning money on interest.

1. The contract called *exchange* (*permutatio*) is the giving of one thing or right as an equivalent for another, or of interchanging two objects of equal value. Until the objects are surrendered, the contracting parties remain each the possessor of his own property and responsible for any loss that may affect it. In making this contract one party is not allowed to take undue advantage of the other, or maliciously exploit the other's ignorance, necessity or weakness of character, or conceal the defects of the object to be exchanged.

2. A *lease* (*locatio et conductio*) is a contract by which a right to the possession or enjoyment of real property is transferred for a definite period to another, in consideration of a periodical

compensation called rent (*locarium*).[1] By *real property* in this connection is meant property that is not consumed in the first use, but continues to render repeated services. Such commodities have a value over and above that of first use. The value of a house, for instance, is greater than the value of the lease of it for a year, because the house will continue to render services and be valuable after the lease expires.[2] A lease may have for its object: houses, land, animals, labor or services. If it is for more than a year, it must be in writing.[3]

a) The *lessor* or landlord (*locator*) may not lease his property for immoral or unlawful purposes. A lease for such a purpose is void. He must see to it that the property is in good condition when it is handed over to the lessee, or reveal its defects, and he must not demand it back before the time agreed upon; he must not raise the rent arbitrarily (*"rent profiteering"*); he must not

1 J. P. Gury, S. J., *Comp. Theol. Mor.*, Vol. I, n. 863: *"Locatio est contractus, quo usus vel fructus rei aut personae opera pro certo pretio ad tempus ab uno accipitur et ab altero conceditur. Qui rem tradit in usum vel utilitatem alterius dicitur locator, alter locatarius seu conductor nuncupatur."*

2 Slater, *A Manual of Moral Theol.*, Vol. I, p. 513.

3 A. S. Bolles, *Putnam's Handy Law Book*, p. 152.—Gury, *l. c.*: *"Hinc variae enumerantur locationis species: 1. Locatio aedificiorum; 2. Agrorum; 3. Animalium; 4. Laboris et famulatus. Ad contractum locationis aliquatenus accedunt emphyteusis* [Rom. law: A perpetual lease of lands and tenement in consideration of annual rent and improvement thereon] *seu feudum* [feud; land held of a superior on condition of rendering him service]. . . . *Differunt tamen emphyteusis et feudum a locatione, quia nequeunt constitui nisi in re immobili nec minus quam ad decennium."*

abuse the ignorance or need of the lessee, and in case of necessity (for instance, crop failure or hail storms) should remit the rent either entirely or in part.

b) The *lessee* is bound to take proper care of the property in conformity with his contract, to keep it in good repair, to pay the rent promptly when it is due, return the property intact to the owner after the lease has expired, and make restitution if damage has been done to it through his fault.[4]

c) A lease is *terminated* by the destruction of its object, by the expiration of the contract, by mutual consent, or by the death of one of the contracting parties.

A yearly tenant must give and is entitled to a reasonable notice to quit, which according to the common law should be given by one to the other party six calendar months before the expiration of the current period.

If a lease runs beyond the statutory period, it is not absolutely void, but continues during the joint wills of both parties, and may therefore cease at the will of either. If the landlord wishes to terminate it, he must give the tenant notice to quit. If he disregards the law and takes immediate possession, he is a trespasser.

4 Note that, in America, if the lease is for a house or other building, and no specific agreement was made relieving the lessee, he is liable under the common law (which has, however, been changed in several States), for the rent of the building if it burns down, just the same as if he were still the occupier. (Cfr. A. S. Bolles, *Putnam's Handy Law Book for the Layman*, pp. 151 sq.).—Gury, *Comp. Theol. Mor.*, I, n. 864–869.

When the terms of a lease are in doubt, they are to be construed in favor of the tenant.

A lease must clearly describe the premises, and a defective description cannot be cured by outside evidence. Any language will suffice that shows the intention of the parties.

To make a valid lease, the parties must, of course, be competent. A lease by a minor is not *per se* void, but he may cancel it by some positive act.

If a blank form is used in making a lease, and the printed portions do not agree with the written insertions, the written matter is held to express the intention of the parties.

A lessee can assign or sublet his lease, unless this is forbidden, as it often is by the lessor, without his consent. If the lessee dies, his executor or administrator can assign the remainder of the term.

As the lessee may assign or sublet, so may the lessor part with his interest in the leased property.[5]

Fixtures or things attached to the freehold by the tenant at common law become the property of the landlord, according to the maxim, *"quidquid plantatur solo, solo cedit."* The common law rule, however, has been greatly mitigated and now, in general, fixtures erected for purposes of trade, ornament, or domestic use, and also agricultural fixtures, may be removed by the tenant. In certain cases, due notice must be given to the landlord before doing this. A tenant can make no permanent alteration without his landlord's consent; should he do so, and thereby injure the premises, the landlord may recover damages, or, if such an alteration is feared or threatened, he may prevent it by obtaining an injunction.

If the landlord has agreed to make repairs, he must

5 Bolles, *op. cit.*, pp. 152 sqq.

keep the property in good condition. But if he fails to keep his agreement to repair, the tenant is not excused from paying his rent or justified in leaving the premises. His remedy is to sue the landlord for the damages or injury done to himself.[6]

d) A sort of sub-species of lease is the contract by which a man hires the services of another for an appropriate consideration, commonly called *wage* or *salary* (*locatio sive conductio operae seu locatio personalis*).

The relation created by such a contract differs according to the nature of the work involved, which may be either predominantly corporal or chiefly intellectual.

Public officials, too, are bound to the commonwealth by a sort of contract.

Justice and charity demand that a due proportion should exist between labor and its wage. The employer must not abuse the necessity or temporary embarrassment of his workers by imposing oppressive conditions. He must not conceal onerous duties connected with an employment, and must pay his laborers promptly at the appointed time. He must not discharge them arbitrarily nor compel them by harsh treatment to give up their jobs. He should conform willingly to the laws regarding due provision for the life and health of his workers and treat them as

[6] *Ibid.*, pp. 158, 159.

helpers, not as slaves, ever mindful of the account he will have to give to the Lord, who judges rich and poor according to the same norms of justice.[7]

A servant or employee must not undertake work for which he is not fit or in which his faith or morals are placed in jeopardy. He must faithfully comply with the duties he has assumed by the contract into which he has, explicitly or implicitly, entered with his master or employer,—"not serving to the eye, as it were pleasing men, but, as the servants of Christ doing the will of God from the heart, . . . knowing that whatever good thing any man shall do, the same shall he receive from the Lord, whether he be bound or free." [8] Finally, he has a claim to a fair wage [9] and the right to employ all licit means in order to improve his economic and social status. Among these means are *trade* and *labor unions* and *strikes*.[10]

7 Col. IV, 1; Eph. VI, 9; 1 Tim. VI, 2; Philm. 16.

8 Eph. VI, 5–8.—Cfr. Col. III, 22–25; 1 Tim. VI, 1 sq.; 1 Pet. II, 18 sq.

9 Matth. X, 10; Luke X, 7; 1 Tim. V, 18.—Cfr. St. Thomas, *Summa Theol.*, 1a 2ae, qu. 114, art. 1.—A. Vermeersch, S. J., *Quaestiones de Iustitia*, 2nd ed., pp. 527 sqq.—F. X. Godts, C.SS.R., *Scopuli Vitandi*, 3rd ed., Bruges 1896, pp. 230 sqq.—J. Biederlack, S. J., *Die soziale Frage*, 7th ed., pp. 150 sqq., 233 sqq.—C. Gennari, *Consultazioni Morali-Canoniche-Liturgiche*, Vol. I, 2nd ed., Rome 1902, pp. 378 sqq.

10 A. Vermeersch, S. J., *Quaest. de Iustitia*, 2nd ed., pp. 624 sqq.; Göpfert, *Moraltheol.*, Vol. II, 6th ed., pp. 199 sqq.; Lehmkuhl, *Arbeitsvertrag und Streik*, 4th ed., Freiburg i. B. 1904, pp. 39 sqq.; Idem, *Casus Conscientiae*, Vol. I, 3rd ed., pp. 895 sqq.; J. Treitz, *Der moderne Gewerkschaftsgedanke*, Treves 1909, pp. 73 sqq; Broda, *La Fixation des Salaires*, Paris 1912; J. A. Ryan, *Distributive Justice*, pp.

For deciding what a *fair wage* is the following general rule has been laid down by Pope Leo XIII: "To labor is to exert oneself for the sake of procuring what is necessary for the purposes of life, and chief of all, for self-preservation. 'In the sweat of thy brow thou shalt eat thy bread.'[11] Hence a man's labor bears two notes or characters. First of all, it is *personal,* inasmuch as the exertion of individual strength belongs to the individual who puts it forth, employing such strength to procure that personal advantage on account of which it was bestowed. Secondly, man's labor is *necessary;* for without the result of labor a man cannot live; and self-preservation is a law of nature, which it is wrong to disobey. Now, were we to consider labor so far as it is *personal* merely, doubtless it would be within the workman's right to accept any rate of wages whatsoever; for in the same way as he is free to work or not, so is he free to accept a small remuneration or even none at all. But this is a mere abstract supposition; the labor of the workingman is not only his personal attribute, but it is *necessary;* and this makes all the difference. The preservation of life is the bounden duty of one and all, and to be wanting therein is a crime. It follows that each one has a right to procure what is required in order to live; and the poor can procure it in no other way than through work and wages. Let it then be taken for granted that workman and employer should, as a rule, make free agreements, and in particular, should agree freely as to the wages; nevertheless there underlies a dictate of natural justice more imperious and ancient than any bargain between man and man, namely, that remuneration ought to be sufficient to support a frugal and honorable wage-earner. If

400 sqq.; H. Parkinson, *A Primer of Social Science,* pp. 112 sqq.

11 Gen. III, 19.

through necessity or fear of a worse evil the workman accepts harder conditions because an employer or contractor will afford him no better, he is made the victim of force and injustice. In these and similar questions, however, such as, for example, the hours of labor in different trades, the sanitary precautions to be observed in factories and workshops, etc.—in order to supersede undue interference on the part of the State, especially as circumstances, times, and localities differ so widely, it is advisable that recourse be had to societies or boards, . . . or to some other mode of safeguarding the interests of the wage-earners; the State being appealed to, should circumstances require, for its sanction and protection." [12]

The workman, then, says Fr. Slater, "has a right to a living wage, and the employer who grows rich by sweating his work-people commits a sin against justice and is bound to make restitution of his ill-gotten wealth." [13]

A living wage must be a living *family wage* (*merces familialis*), that is, one which will enable the laborer to establish a family and to support that family decently according to his station in life.

A family wage is due to a man because he is by nature ordinarily destined to found a family and provide for it. The wage should be proportioned to the normal size of the family. Many leading Catholic writers hold that the normal family wage is due to every workman on the ground of strict justice. This opinion, though not confirmed by the Church, is highly probable.

12 Leo XIII, Encyclical *"Rerum Novarum,"* tr. in *The Pope and the People*, pp. 206 sqq.

13 Slater, *A Manual of Moral Theol.*, Vol. I, p. 293.

The principle of the living family wage, as Fr. Ross points out, has this important implication that it makes *child labor* unnecessary. If the head of a family receives a sufficient wage, his children will not be forced to work. They should not be robbed of their childhood for the sake of a few pennies a day. The State has a right and a duty to protect its future citizens by forbidding child labor.[14]

e) To stop work without regard to the stipulations of a written or oral contract constitutes a breach of contract and entails the duty of restitution. Whether such a breach of contract should be subject to criminal proceedings, is a question which in our time is political rather than judicial. A man does not as a rule break a contract without justifying his action, at least before his own conscience. That a workingman has the right to withdraw from a wage contract one-sidedly for good reasons, such as the non-compliance of the employer with the stipulations agreed upon, or an essential change in the relation between labor and wage, cannot be denied. Though *strikes* are mostly based on false and short-sighted calculations, not every such act of combined self-help is *per se* immoral, but each case must be decided on its own merits, with due regard to the interests

14 Reuter-Lehmkuhl, *Neo-Confessarius*, pp. 215 sq.; cfr. Göpfert, *Moraltheol.*, Vol. II, 6th ed., pp. 196 sqq.; Parkinson, *A Primer of Social Science*, pp. 170 sq.; J. A. Ryan, *Distributive Justice*, pp. 373 sqq.; J. E. Ross, *Christian Ethics*, pp. 342 sq.; M. Cronin, *The Science of Ethics*, Vol. II, pp. 347 sqq.

of the weaker party when there is room for doubt.

A *strike,* as our readers know, is the quitting of work by a body of laborers for the purpose of forcing their employer or employers to comply with some demand or condition, as for increase or against reduction of wages. As carried on at the present time, strikes are usually accompanied by active interference with the business of the employers, by the use of the *boycott,* intimidation of new employees (scabs), etc.[15]

Theoretically, a strike need not necessarily be condemned as illicit, though on account of the numerous evils by which it is usually accompanied it can scarcely ever be advisable *in praxi.* It is for this reason that Leo XIII so strongly insisted on the duty of the State to strive for the *abolition of strikes.*

"When work-people have recourse to a strike," he says, "it is frequently because the hours of labor are too long, or the work is too hard, or because they consider their wages insufficient. The grave inconvenience of this not uncommon occurrence should be obviated by public remedial measures; for such paralyzing of labor not only affects the masters and their work-people alike, but is extremely injurious to trade and to the general interests of the public; moreover, on such occasions violence and dis-

15 W. McDonald, "The Ethical Aspect of Boycotting," *Irish Theol. Quarterly,* Vol. I (1906), No. 3; P. Marshall, *Ibid.,* Vol. I, No. 4; T. Slater, S.J., *Ibid.,* Vol. II, (1907), No. 6.

order are generally not far distant, and thus it frequently happens that the public peace is imperilled. The laws should forestall and prevent such troubles from arising; they should lend their influence and authority to the removal in good time of the causes which lead to conflicts between employers and employed." [16]

Strikes, therefore, especially in their more threatening forms, should be prevented as much as possible for the sake of the common weal. This is not tantamount to saying that they are never justified under any conditions. If the public authorities will not or cannot assure just treatment to the workingmen, and the latter abstain from violence, they must not be condemned for laying down work. The evils that often accompany strikes are not essential to the latter, and a strike quite often is a true act of legitimate self-defense. In such a case, the strike is justifiable, unless higher considerations demand a renunciation of the rights of justice.

When the conditions of labor are not in accord with justice, workingmen may, without awaiting the expiration of their contract, threaten to quit work, and if the employer refuses to comply with their demands, lay down their tools. But if the employer is not guilty of injustice, the workers are obliged to live up to the terms of their contract until it expires. They may ask for

16 *"Rerum novarum" (The Pope and the People,* p. 203).

more favorable conditions, but are not allowed to use force to obtain them.

With due regard to the contractual term, or after its expiration, says Fr. Lehmkuhl, the workingmen may, individually or by common action, go much farther. They have the right to value their labor more highly, and even if they went to imprudent and unfair limits in so doing, one would not be allowed to accuse them of injustice in the strict sense. The value of labor need not be measured by the current exchange value of its product, but the laborer is within his rights if he holds that the exchange value of the product might just as well be measured by the increased value of labor. We do not hesitate to allow the working people a larger scope in this respect for the increase of wages, than we would allow the employers for lowering the same. This lies in the nature of a free contract. The contracting parties may go to the limit of a just wage, the laboringmen in their demands, the employers in their offers. The upper limit, in the very nature of things, is naturally more indefinite than the lower, though in individual instances the determination of the lower limit, too, is not easy. What may be generally regarded as an unjustly low wage may be shorn of its injustice by circumstances. For this reason it will, as a rule, be difficult to permit laboringmen to quit work at once without regard to their contract because of unfair conditions.

In discussing just and unjust conditions of labor we have employed the amount of the wage as an example; not as if it were the only thing that can be enforced through strikes, but because it is the first and most important. The others are either subordinate to, or intimately connected with, wages; in fact, for the most part they are

merely another form of wage regulation. Working hours, night work, limitation of child and female labor, all these questions are closely related to the wage problem; so too, the protection of good morals and compliance with religious duties on the part of the workingmen.[17]

3. *Buying and selling* (*emptio et venditio*) is a bilateral onerous contract by which one party (the seller—*venditor*) agrees to interchange with the other (the buyer—*emptor*) the ownership of an article or commodity for a consideration called price.

There is an important distinction between a contract to sell in the future and a present sale. The first is called an *executory,* the second an *executed* sale. If the goods are transferred, there is an executed sale, even though the price is not paid at the same time. But if the price is paid, and the goods do not pass, the transaction is an executory sale. Both kinds of sale may be by deed or sealed contract as well as by parol or orally.[18]

The commodity sold may be either *real property* or *"goods,"* which latter term includes all personal chattels other than things in action and money.

A sales contract may be *absolute* or *conditional.* Under the moral law of nature buyer and seller may agree between themselves that the subject-matter of the contract with all its fruits and risks should be transferred at once

17 Lehmkuhl, *Arbeitsvertrag und Streik,* 4th ed., pp. 59 sq.

18 Gury, *Comp. Theol. Mor.,* Vol. I, n. 832: *"Contractus venditionis et emptionis definitur: mutatio pretii cum merce aut vice versa, vel contractus onerosus dandi determinatum et iustum pretium pro merce aut vice versa."*—A. S. Bolles, *Putnam's Handy Law Book,* N. Y. 1921, p. 227.

from the one to the other. Under the existing civil laws the right of ownership is usually not transferred until the commodity in question has actually changed hands and the contract price has been paid or at least guaranteed.

The *capacity* to buy and sell is regulated by civil law. Under American civil law a minor may disaffirm his contracts by any act clearly showing this intent.

The *price* may be fixed by the contract itself or in such other manner as the parties may agree. When it is not determined in the sales act, the buyer must pay a reasonable price (*v. infra,* p. 279).

After a contract of this kind has been duly made, neither party can withdraw from the obligations assumed therein without the consent of the other.

To be morally licit and valid a contract of sale or purchase must comply with the following conditions:

a) The commodity which forms the subject-matter of the contract must be the property of the seller, because no one can dispose of what does not belong to him. Secondly, there must be no essential error in regard to the commodity sold and purchased, and hence the seller is bound in justice to inform the buyer, even if the latter makes no inquiry, of any hidden substantial defects and, upon inquiry, also of such non-essential defects as the buyer could himself discover.[19]

19 Cfr. St. Thomas, *Summa Theologica,* 1a 2ae, qu. 77, art. 3.— Under the American civil law, "when there is . . . a sale of

Essential defects are such as affect the substance of a thing in itself or in relation to the known object for which the buyer desires to purchase it, or, in other words, such as alter the nature of an object or render it noxious or useless. Accidental defects, if plainly apparent, need not be mentioned, provided they were taken into consideration when fixing the price. If, however, the buyer is exceptionally ignorant (*valde rudis*), manifest deficiencies, too, should be called to his attention.[20] *Decep-*

goods by description, there is an implied warranty that they shall correspond with the description; and if the contract or sale is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample, if these do not also correspond with the description. The Sales Act contains elaborate provisions relating to implied warranties of the quality of things sold. There is no implied warranty of the quality or fitness of goods for any particular purpose unless the buyer makes known to the seller the purpose for which they are required, and he also relies on the seller's judgment of their fitness for the use he intends to make of them. Again, if the buyer has examined the goods, there is no implied warranty of the defects which such an examination ought to have revealed. An implied warranty as to the quality or fitness for a particular purpose may also be annexed by the usage of trade. There is an implied warranty that the bulk shall correspond with the sample in quality, and that the buyer shall have a reasonable opportunity of comparing the bulk with the sample." (A. S. Bolles, *Putnam's Handy Law Book for the Layman*, N. Y. 1921, 232 sq.)

20 Gury, *Comp. Theol. Mor.*, Vol. I, n. 833: *"Quaeritur, an venditor teneatur rei defectus manifestare? Respondetur:* 1. *Venditor, etiam non interrogatus, tenetur manifestare omnia vitia rei substantialia tam in se quam relate ad finem notum emptoris seu ea omnia, quae rem aliam faciunt vel eam noxiam aut notabiliter inutilem reddunt; secus de pretio tenetur.* 2. *Venditor interrogatus tenetur omnia vitia occulta manifestare, etiamsi rem noxiam aut inutilem non redderent, secus enim dolum committeret. Proinde si dolus fuit vere causa emptionis, contractus est rescindibilis. Si vero dolus fuerit incidens tantum, ita ut emptor vitio cognito etiam emisset, sed non tanti, restituere debet venditor solum quanti minus emisset emptor, quia secus nulla fere venditio fieri posset. Si autem venditor non sit interrogatus et vitium occultum non reddat rem inutilem, pro ratione vitii minuere debet. Ratio est, quia aliter res pluris venderetur quam valeret.* 3. *Venditor, etiam interrogatus, non tenetur per se ostendere vitia rei accidentalia de se manifesta, modo imminuat pretium pro rata defectus. Ratio est, quia tunc non fit iniuria emptori nec ratione pretii quod imminuitur, nec ratione vitii, quod si non viderit emptor, sibi*

tion entails the duty of restitution on the part of the seller,[21] and also on the part of the buyer if he takes advantage of the seller's ignorance to acquire a commodity at a lower price than that which the seller could have obtained if he had not been in error.

b) The *price* must be *reasonable* (*pretium iustum*), *i. e.*, equivalent to the value of the thing sold. Therefore, the seller is bound not to go beyond what the law calls a reasonable price.

The price or value of an object is either legal (*pretium legale sive legitimum*), *i. e.*, fixed by law or public authority, or natural (*pretium naturale sive vulgare*), *i. e., market price* or value, determined by the common judgment or the estimation of those who are best acquainted with all the factors that determine social value in that particular case, or a *fancy price* ("price of affection," as the theologians call it), which is often paid willingly for rare or single objects for which there is no market price, *e. g.*, a first folio of Shakespeare's dramas or a painting by a great master.

Since the judgments of men concerning the value of an object differ greatly, and the market price is subject to constant fluctuations, the so-called natural or just price of a commodity is distinguished into the highest (*pretium summum vel rigorosum*), the lowest (*pretium infimum seu pum*), and the mean or just price (*pretium medium sive moderatum*). The highest is that above which the com-

imputare debet. Excipe tamen, nisi emptor sit valde rudis, quia respectu illius vitium censetur occultum."

21 Gury, *l. c.*, n. 384: *"Quaeritur, an venditor teneatur de omnibus damnis ex vitio rei venditae sequentibus? Resp.: Non tenetur nisi de damnis praevisis, quia non potuit suscipere obligationem quoad ea, quae ne in confuso quidem praevidit."*

modity in question is not commonly sold; the lowest is that below which it is not usualiy sold; and the mean is between the two. Justice will be observed if the price at which a thing is sold is not above the highest nor below the lowest price at which the thing sells at the time and in the place in question.[22] Hence the following rules:

α) The legal price is to be regarded as just and to be observed by all;

β) Where no legal price has been fixed, the common price may be considered just, at least for such objects as have a market price;

γ) As a rule no commodity should be bought below the lowest or sold above the highest price.[23]

22 Slater, *A Manual of Moral Theol.*, I, 524.—Gury, *Comp. Theol. Mor.*, Vol. I, n. 840: *"Duplex est (iustum pretium)*: 1. *Legale, quod a lege determinatum; 2. Naturale seu vulgare, quod valori rei respondet iuxta communem hominum aestimationem. Pretium autem naturale est: 1. Summum, supra quod res aestimari non solet; 2. Infimum, infra quod res generatim non aestimatur; 3. Medium, quod inter utrumque interponitur."*—Cfr. J. Biederlack, S. J., *Die soziale Frage*, 7th ed., pp. 144 sqq.—Under the American civil law, a reasonable price is "generally the market price at the time and place fixed by the contract or by law for delivering the goods, but not always. Under unusual conditions the market price does not furnish the only test. Said the court in one of these cases: a reasonable price may or may not agree with the current price of the commodity at the precise time of making it. The current price of the day may be highly unreasonable from accidental circumstances, by the action of the seller himself in purposely keeping back the supply." (A. S. Bolles, *Putnam's Handy Law Book for the Layman*, p. 231).—J. Kelleher, "Market Prices," in the *Irish Theological Quarterly*, Vol. X, (1916), nos. 38, 39, 40.

23 Gury, *Comp. Theol. Mor.*, I, n. 841: *"Pretium legale seu auctoritate civili constitutum habendum est ut adaequatum valori rei et ideo servandum est sub onere restitutionis. Ratio est, quia ad auctoritatem civilem pertinet statuere, quidquid ad commercium publicum attinet, quum leges pro bono communi condere possit. Deficiente pretio legali illud pretium solum habendum est ut iustum, quod tale determinatur aestimatione communi, si agatur de merce, quae apud multitudinem appretiationem habeat, quia pretium adaequatum eiusmodi rerum ex ipsarummet utilitate ad communes usus deducitur. Porro appretiatio talis utilitatis nequit melius fieri,*

δ) Fancy prices may be foolish, but they are not unjust, unless the buyer exploits the necessity of the seller.[24]

Special kinds of sale contracts are those known as resale (*retrovenditio*), sale by auction (*venditio sub hasta sive licitatio*), monopoly (*monopolium*), and brokerage (*venditio per proxenetas*).

(1) *Retrovenditio* is a contract in which the seller reserves to himself the right to purchase the commodity which he sells on condition that he refunds to the buyer all his expenses and pays him for any increase in value. This is permitted under the following conditions: (α) that the price be reduced in proportion to the burden which is imposed upon the buyer; (β) that the

quam per communem aestimationem. Si vero res vulgarem aestimationem non habeant, ut sunt gemmae, tabellae pretiosae etc., probabilius aestimandae sunt iuxta iudicium peritorum in hac materia, attentis circumstantiis, spectatâ rei novitate, antiquitate, raritate, etc. Ratio est, quia ipsi reputantur iudices idonei in his rebus, prout vulgus in vulgaribus. Opposita tamen sententia ut probabilis apparet, quia in eo casu videtur iustum pretium illud, de quo contrahentes conveniunt. . . . In praxi non sunt inquietandi illi, qui bona fide et libere ad proprium arbitrium in talibus rebus conveniunt. A fortiori iustum reputandum est illud pretium, de quo pars utraque convenit, si pretium prorsus ignoretur, quia utraque tunc periculo exponitur."

24 *Ibid.*, n. 842: *"Quaeritur, an venditor rem carius vendere possit ob specialem affectum quem erga eam experitur, vel commoditatem quam ex ea percipit. Respondetur: Ad 1: Affirmative; ratio est, quia affectus domini ad rem suam est vere pretio aestimabilis, quum privatio rei sit pro ipso maior. Ad 2: Affirmative etiam a fortiori ut patet; siquidem privatio specialis commodi reddit rem multo pretiosiorem venditori et aequum est, ut pretium augeat ratione maioris iacturae quam patitur."*—Cfr. M. Cronin, *The Science of Ethics*, Vol. II, pp. 316 sqq.—D. Barry, "Special Knowledge and the Just Price," *Irish Theol. Quarterly*, Vol. X. (1915) No. 37.

price of repurchase be the same; (γ) that the buyer assume all ordinary risks unless the price be made so as to cover them; (δ) that the subject-matter of the contract be resold in the same condition in which it was sold, either with or without the accruing fruits.[25]

The so-called *contractus mohatra,* by which the buyer was compelled to resell to the seller immediately at a lower cash price a commodity which he had purchased from him at a higher price or on credit, this higher sum to be considered the original loan or sum owed, was condemned as "veiled usury" by Innocent XI.[26]

(2) An *auction* is a contract by which one party binds himself to transfer and the other to acquire the ownership of some property, whether

25 Gury, *Comp. Theol. Mor.,* I, n. 849: *"Retrovenditio est contractus quo venditor sibi reservat ius rem suam redimendi sub conditione, quod sumptus, meliorationem vel similia resarciat. . . . Conditiones ad hoc requisitae sunt: 1. Ut pretium minuatur iuxta aestimationem gravaminis quod emptori imponitur; 2. Ut non sit pactum de retrovenditione pretio maiori vel minori facienda; licitum est pactum, ut retrovendatur eodem pretio, licet res pretio augeatur; 3. Ut non imponatur, quod periculum rei venditae cedat in damnum venditoris, quum illud per se ad emptorem spectet, nisi pretium iuxta aestimationem periculi augeatur; 4. Ut res retrovendatur sicut traditur vacua vel cum fructibus."*

26 For instance: You need money and ask me for a loan (*mutuum*), for which I should not (in those days) have been allowed to charge interest. To circumvent the law I sell you a horse for 100 dollars, on credit, with the understanding that you must *resell* it to me at once for 80 dollars cash. Thus you receive 80 dollars cash, but you owe me 100 dollars and I am 20 dollars to the good. Do not money-sharks practice similar tactics to-day in loan transaction?—*Prop. damn. sub Innoc. XI,* n. 40: *"Contractus mohatra licitus est, etiam respectu eiusdem personae, et cum contractu retroventionis praevie inito cum intentione lucri."* (Denzinger-Bannwart, n. 1190).—Cfr. Gury, *op. cit.,* I, n. 850; Göpfert, *Moraltheologie,* II, p. 181; P. Cleary, *The Church and Usury,* Dublin 1914, p. 13.

real or personal, at the highest price to be got at a public sale. There are various methods by which such sales are conducted, and descriptions of the property to be sold and the conditions of sale are usually notified to the public by printed catalogues or circulars. The bidding proceeds in an orderly manner, each bid being in the nature of an offer, which may be revoked until the auctioneer signifies his acceptance by the fall of his hammer or in any other customary way. By this a contract is concluded with the last bidder and the property becomes his.[27]

Auctions may be forced or voluntary. A *forced auction* is one by which property is sold by public authority, as in the case of a bankrupt merchant to satisfy his creditors. A voluntary auction is one held by the owner of his own accord, either in person or through an authorized representative. The owner may request his friends to bid for the goods put up at auction in order that the latter be not sold too cheaply, to his own detriment or that of his creditors, but he is not permitted to run up the price by means of fictitious bidders (*licitatores ficti*) because this would involve an injustice to the *bona fide* bidders. Similarly, the bidders present at an auction may not conspire together to make inadequate bids, or to use illegitimate means (intimidation, fraud, or violence) to hinder others from bidding.[28]

27 Slater, *A Manual of Moral Theol.*, Vol, I, p. 533.

28 *Ibid.*—Cfr. St. Alphonsus, *Theol. Mor.*, l. III, n. 808 (ed. Gaudé, I, n. 851–854); Göpfert, *Moraltheol.*, Vol. II, 6th ed., pp. 192 sqq.—An auctioneer, under our civil law, is primarily the owner's agent only to the moment when he accepts the purchaser's bid and

The auction price of an article is not the same as the ordinary buying price, which latter is supposed to represent the real value of the article. The auction price may fall far below the *infimum pretium* or rise far above the *summum pretium.* The *just auction price* is determined by the highest bid, whatever that may be.

The element of equality required for all just contracts is provided in the case of auction sales in the equal chances afforded to seller and buyer, of profit and of loss. On the side of the buyer, as Fr. Cronin says, there is the chance of his succeeding in knocking out all other bidders; in favor of the seller there is the equal chance of each bidder being knocked out by the rest.[29]

(3) A *monopoly* (from the Greek μονοπολία, single or sole selling), is the exclusive right or power secured to one or more persons, to sell some commodity or to carry on some branch of

knocks down the property to him. Authority may be conferred on an auctioneer in the same way as on any other agent for the sale of similar property, verbally or in writing. Authority to sell property does not of itself imply authority to sell it at auction. If goods are sent to an auction room to be disposed of, this is deemed sufficient evidence of authority to sell them by auction and to protect whoever buys them. The seller is not bound by any terms stated by the auctioneer differing from those given to him by the owner. If the owner has imposed no terms on him, he has the implied authority usually existing in such cases. An auctioneer cannot, consistently with his duty, refuse to accept bids from anyone, unless the bidder is irresponsible, or unwilling to comply with the terms of the sale. He is justified in rejecting the bids of insane persons, minors, drunken persons, trustees of the property, and, perhaps, in some cases, of married women. It is impossible with good faith to combine the inconsistent capacities of seller and buyer, crier and bidder, in one and the same transaction. The auctioneer has no authority to warrant the property sold unless such authority has expressly been given to him. He must use ordinary and reasonable care in keeping the goods entrusted to him for sale, but is not responsible for their safety. (A. S. Bolles, *Putnam's Handy Law Book,* pp. 16 sqq.)

29 Cronin, *The Science of Ethics,* Vol. II, p. 320 sq.

trade or manufacture. A monopoly is permissible if it is granted by law for the common good. Thus in some countries the government controls the sale of salt or tobacco. This is called a *legal monopoly* (*monopolium legale seu legitimum*). A legal monopoly may be private, namely, if it is granted by law to private persons, such as inventors or authors (*monopolium privatum*). This, too, is licit, provided it does not result in an undue raise of prices or in what has become known since the World War as *"profiteering,"* namely, buying up the necessaries of life with a view to reselling them at enormous profits.

"A natural monopoly arises from one or a few who band together and who are the owners of the sole source of supply of some commodity. . . . A natural monopoly . . . is . . . lawful, but if the commodity or service which is thus monopolized is necessary or very useful for the common good, natural equity prescribes that the price demanded should be fair and reasonable, even if it be not regulated by positive law. If the subject-matter of the monopoly belongs to the class of non-necessaries and luxuries, as for example, a mine of diamonds or rubies, of special quality, it cannot be said that the price is fixed and determined by natural conditions, and the owner will be justified in taking any price that he can get without fraud or misrepresentation. Even *capitalistic monopolies* of commodities or services which are necessary or very useful to the community are not morally wrong if the prices charged are fair and reasonable, and if there is nothing

reprehensible in the method of conducting business. The public may derive considerable advantages from these monopolies. They are capable of effecting great savings in the costs of production, advertising, distribution, and general management, and they may secure a large return on their capital and at the same time sell cheaply to consumers. They obviate, too, the wastes and the recurring depressions in trade which follow from unlimited competition. Monopolies, however, are morally wrong when the prices demanded for necessary or useful articles of consumption are excessive, or when the methods of business are unjust, uncharitable, or generally unlawful. The prices will be excessive when much more than a fair return for the capital employed is obtained, after all the costs of production and distribution have been defrayed, and when as a natural consequence they are higher than would rule if there were no monopoly. When means are used to crush rivals in order to secure a monopoly, when bribery of public officials is practiced to obtain from government specially favorable laws or treatment, when discriminating rates are obtained from railways and other companies, when workmen are tyrannically and unjustly treated, when prices of raw material are unduly depressed and producers are robbed of a fair compensation for their toil and trouble, and in general when fraud or force is used to accomplish the end in view [*viz.*, excessive profits] the methods of business are immoral and monopolies which employ such methods are to be condemned. If prices demanded by a monopoly are in the estimation of prudent men higher than are fair and reasonable, injustice is committed, and there is consequently an obligation to make restitution to the buyers who have been robbed [or to the community]. If the prices charged are not altogether unfair and

unreasonable, but high, and above what in the circumstances would be considered moderate, there will be a sin committed against charity, in that private advantage has been unduly pursued to the detriment of the people, who have been compelled to pay higher prices for the enrichment of the monopolists.

"From what has been said it is clear that what are called *'rings'* and *'corners'* in wheat, cotton, and other such commodities are morally wrong, in that they cause the financial ruin of many people, and produce wide distress and instability of trade. *Trusts,* too, and *combinations in trade* are full of danger for the community. They wield immense power, and the temptations to abuse it, especially as a company has no conscience, as the saying is, are too great for the common run of business men. It is well that the government should have the right of examining and inspecting the affairs of such bodies and of applying the necessary remedies in case of abuse." [30]

(4) We come now to *brokerage.* A broker is a person who makes it his business to negotiate sales or contracts as an agent, or to make sales and purchases for a commission (*venditio per*

30 Slater, *A Manual of Moral Theol.,* Vol. I, pp. 535 sqq.—In the United States the only monopolies that the laws look on with favor consist of the post office, which is a government monopoly, and the rights granted to individuals under the patent and copyright laws. Monopolies commonly known as trusts are regarded as odious, and various States and the Federal Congress have enacted laws making them illegal. (Cfr. *Cyclopedia Americana,* Vol. X, *s. v.* "Monopoly," and Vol. XV, *s. v.* "Trusts").—Cfr. J. A. Ryan, "The Moral Aspect of Monopoly," in the *Irish Theological Quarterly,* Vol. III (1908), No. 11.—St. Alphonsus, *Theol. Mor.,* l. III, n. 815–817.—J. P. Gury, *Comp. Theol. Mor.,* I, n. 855–857.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 325 sqq.

proxenetas). A broker is ordinarily a mere agent, and his sales are private.

There are many kinds of brokers: bill and note brokers, stock brokers, shipping brokers, insurance brokers, real estate brokers, pawn brokers, merchandise brokers, etc.

A broker may not appropriate to himself a larger sum than the commission agreed upon between him and his client, or fixed by law, unless indeed he has added considerably to the value of a commodity by extraordinary diligence or with the permission of the owner.[31]

Not a few brokers nowadays deal in stocks and bonds and other valuable papers, buying and selling these at a commission, either in the open market or to private customers. If no illicit means (such as the circulation of fictitious reports, the use of illegitimately discovered secrets, etc.) are employed in speculations of this kind, they cannot in themselves be condemned as immoral. Nay, it must even be admitted that, to a certain extent, *speculation in stocks and bonds* is useful, inasmuch, namely, as it facilitates the purchase of valuable papers for the investment of capital and their sale for the provision of ready cash. It also aids in the placing of government bonds. The great evil of the stock exchange is that it easily advances speculation and gambling beyond all due limits and favors fraudulent undertakings. In the nature of the case, lying and fraud are often applied as

31 A. S. Bolles, *Putnam's Handy Law Book*, pp. 45–47; Gury, *Comp. Theol. Mor.*, Vol. I, n. 858 sq.; Göpfert, *Moraltheol.*, Vol. II, 6th ed., pp. 191 sq.

means in speculation. The so-called *financial crises* are for the most part artificial "bull and bear periods" in which the speculators by every imaginable and often dishonest means endeavor to raise or depress the price of certain stocks and bonds.

(5) In this connection a word concerning dealings in *"options"* and *"futures"* may not be out of place. One is said to deal in "futures" when the goods contracted for are not in his possession, nay do not even belong to him at the time the sales contract is made. If the terms of the contract leave to the seller the choice either to deliver the stipulated goods at a fixed price or to pay the difference between the price agreed upon and the actual market price when the term of the contract arrives, the contract is called an "option."

"From such an 'option' contract to mere *'time bargains'* or *'difference transactions'* or *'margin'* is but a step. In these transactions real delivery of goods to the buyer is not contemplated by either party; they merely make use of the market price of wheat, or cotton, or stocks and shares, or bacon, or other commodity, as matter for wager. . . . It is a subject of hot debate whether such gambling has a good or bad effect on genuine trade. There is, of course, a great increase of business for commission houses, brokers, and agents generally resulting

from fictitious bargains, and it is to be expected that such classes will be loud in defense of time bargains, or 'options' and 'futures,' as they are often indifferently and loosely called. On the other hand, producers of foodstuffs and manufacturers of raw material into cotton goods seem generally persuaded that their trade is seriously injured by gambling transactions on 'change. Within the last few years several governments have given serious attention to the problem."

From the moral point of view dealings in futures must be judged as bets or wagers, for a speculative contract in "futures" is to all intents and purposes nothing but a wager or bet concerning a future and uncertain event. The question whether it is lawful or not depends on the broader question concerning the lawfulness of betting.

Applying the Catholic moral doctrine on betting to the question before us, Fr. Slater, whom we have just quoted, says: "We are compelled to admit that a deal in futures in itself is not wrong if it is accompanied by the conditions laid down [*i. e.*, that the money risked belongs to him who risks it; that the transaction is free from fraud and deceit; and that, finally, the chances are fairly equal on both sides]; but that it is wrong if any of these conditions are wanting. However, even though the requisite conditions may be present, it is a dangerous pastime, and

should be discouraged, like any other form of gambling, in the interests of public and private morality."

Passing from the abstract to the concrete, namely, to the form in which betting is actually carried on in the exchanges of the great commercial centres of the world, the same eminent English moralist, after carefully weighing the arguments often adduced in favor of the practice, says: "On the other hand producers and consumers alike seem generally to have made up their minds that gambling in futures has a disastrous effect on trade. Competitors are almost indefinitely multiplied; the area of competition is vastly enlarged; and producers of wheat, for example, in countries where land and labor are dear, where taxes are burdensome and skies unpropitious, find themselves forced to compete with others who live under opposite conditions. Tariffs may remedy the evil to a certain extent, as far as effective contracts which contemplate actual delivery are concerned, but they cannot shut out the subtle influence of gambling transactions. In addition to this, gambling in futures falsifies prices. In a healthy condition of the market, the price of an article will depend on the costs of production and the law of supply and demand. As long as these factors dominate the situation, producer and consumer can satisfy themselves that they have full value for their goods or for their money. But when natural prices are interfered with from without by speculators who do not contemplate effective delivery of commodities, and who are only interested in differences, effective dealers can have no security that they get full value in their transactions. Prices are falsified and markets are reduced to an unnatural condition. . . . There are also some more general considerations which cannot be overlooked by the

moralist. Betting, as we have seen, is not in itself unlawful, provided it is accompanied and safeguarded by certain conditions. When, however, it becomes a habit, and degenerates into gambling, our verdict in ordinary cases must be different. . . . If it becomes a passion, if the gambler seeks to make it a substitute for honest toil, and strives to make it support him or bring him wealth, serious harm has already been done. The gambler produces nothing; he adds nothing to the wealth of the community; he soon learns to shun honest work; he becomes a parasite who preys on society, and eventually brings ruin on others as well as on himself. So that dealing in differences, even if regarded merely as a form of gambling and speculation, must fall under the censure of the moralist. . . . But it would be a comparatively small matter if the evil connected with gambling in futures were confined to the parties immediately concerned in the transaction. Unfortunately, too often many good and innocent people, who never dream of speculating on 'change, suffer loss from the operations conducted there. A rise or fall in the price of wheat means for the operator the winning or losing of his bet, but for many a farmer a fall in the price means that he is robbed by the 'bears' of the fruit of his toil; it may mean the bankruptcy and ruin of many a respectable family. On the other hand, a rise in prices means an additional hardship on the poor, a greater difficulty in making ends meet, a robbing of many a poor family of the staff of life. On many grounds, therefore, the verdict of the moral theologian on the question of the lawfulness of dealing in futures must be that in practice the transaction is immoral and wrong." [32]

[32] T. Slater, S. J., *Questions of Moral Theology*, N. Y. 1915, Ch. IX, "Deals in Options and Futures," pp. 145–158.

(6) *Advertising,* that is, the use of extraordinary means of publicity for the purpose of calling attention to certain goods or products, is not *per se illicit,* nay, to a certain extent at least, may be considered necessary for the ordinary conduct of business, industry, and commerce. Unfortunately the practice is only too often made a means of deceiving and cheating the public.

Göpfert lays down the following rules for keeping advertising within proper bounds:

(α) The advertiser may praise the quality of his goods and call attention to their merits, provided the price he asks is not unfair; but it is a violation of charity to advertise so as to injure competing merchants.

(β) It is immoral and forbidden to misrepresent the quality or value of the goods advertised, and if such misrepresentation actually results in loss to others, it entails the duty of restitution, not only to the defrauded buyers, but likewise to the competitors whose business has been damaged by such illicit means.[33]

4. The contract known in Scholastic parlance as *census* (French, *rente*) is an agreement by which a person (*censuarius*) transfers the right of ownership and the usufruct of an object to another (*censualista*) in consideration of an annuity or pension.[34]

33 Göpfert, *Moraltheol.,* Vol. II, 7th ed., p. 187; see the same eminent author's paper *"Zur sittlichen Beurteilung des modernen Reklamewesens"* in the *Theologisch-praktische Quartalschrift,* of Linz, 1900, pp. 593 sqq.

34 Gury, *op. cit.,* Vol. I, n. 874:

The juridical distinction between this sort of contract and an investment of capital consists in this that the property transferred in consideration of an annuity cannot be demanded back like money simply loaned to another. Formal justice is safeguarded by the legal fiction that the investor merely receives back in small portions what he has entrusted to another. What he receives, therefore, in the form of interest, is his own property, whereas the other party to the contract gets for his trouble whatever gain he can make with the capital or property confided to him.

The question which has worried many a moralist, whether one may live on *rentes* without productive work, is theoretical rather than practical. "Nature itself," says Linsenmann, "compels children who are not yet old enough to support themselves, old men who are no longer able to work, and those disabled by illness, to live off the labor of others. Moreover, a considerable number of men and women are destined by natural law and the so-

"Census (gallice rente) est ius pensionem annuam percipiendi ex re vel persona. Census potest esse multiplex, scilicet: 1. Reservativus (rente foncière), id est, pensio annua percipienda ex re quoad fundum alienata; 2. Consignativus (rente constituée), id est, pensio annua percipienda ex re vel ex persona ex titulo emptionis; 3. Realis vel personalis, prout pensio in re frugifera constituitur vel in personae labore et industria; 4. Temporarius vel perpetuus aut vitalitius (rente viagère), prout constituitur ad tempus, v. g. ad 20 annos, vel in perpetuum vel ad vitam hominis; 5. Redimibilis ex una vel utraque parte, prout ad nutum unius vel utriusque redimi potest, vel irredimibilis, si ex pacto venditor seu censuarius se liberare non possit capitale restituendo, tunc emptor seu censualista necessario ius suum in censum servat." Cfr. n. 875–878.

cial order to devote themselves not to productive bodily labor, but to the higher intellectual and spiritual tasks of humanity. To this class belong most public officials, priests, nuns, authors, teachers, etc. . . . If their right to participate in the productive labor of their fellows is conceded, it is no longer a theological, but purely an economic question whether the fructification of capital had better take place in the limited form of *census, rentes,* or annuities, or in the freer form of modern investments. Catholic moralists, being conservative, admitted the justification of the contract called *census* more readily than the lawfulness of the more modern forms of investment, for the reason that it seemed to them more conducive to the stability of property rights, though already in the Middle Ages it was perceived that the irrevocability of *census* contracts sometimes involved unnecessary and unfair harshness." [35]

5. A *money-changer* is a person who exchanges money at a prescribed rate for gain. The underlying contract is called *cambium.* It is qualified as *cambium manuale* or *minutum* if the exchange takes place in cash; *locale seu per literas,*[36] if effected by means of a bill

35 Linsenmann, *Lehrb. d. Moraltheol.,* pp. 554 sq.—Cfr. J. A. Ryan, *The Church and Interest-Taking,* St. Louis, 1910.—P. Cleary, *The Church and Usury,* pp. 121 sqq.

36 Gury, *Comp. Theol. Mor.,* 1, n. 870: *"Cambium est permutatio pecuniae cum aliquo lucro camposoris. Cambium tamen in genere idem sonat ac permutatio sive in pecunia sive in aliis rebus. Cambium varium distinguitur, scilicet: 1. Cambium reale seu verum et cambium fictum seu siccum. Prius illud est quo pecunia cum alia reapse commutatur. Posterius vero illud est quo permutatio fingitur, sed non est aliud nisi mutuum palliatum, uti v. g. cum datur pecunia tanquam in alio loco recipienda, quae tamen in hoc ipso loco recipitur; 2. Cambium manuale seu minutum et cambium locale seu per litteras. Prius fit, cum permutatur*

drawn in one place or country upon a drawee in another place or country. If the profit (*agio,* commission) which the money-changer (*campsor, argentarius, nummularius, trapezita*), makes, is moderate, *i. e.,* according to law or custom, the business is unobjectionable. It is wrong, however, to issue bills of exchange to a fictitious address (*cambium fictum vel siccum*) and to demand more than the regular fee or commission.[37]

To exchange the money of one country for that of another requires a certain capital and personal service, which must be paid for out of the commission charged. All that can be demanded from the standpoint of Moral Theology is that the profits be not larger than they would be in any other legitimate business in which the same amount of capital is invested under similar conditions. The State should supervise the business of money-changing in order that it may be honestly conducted.[38]

pecunia unius formae vel materiae cum pecunia alterius formae aut materiae. Posterius autem locum habet, quando pecunia praesens commutatur cum pecunia absente in alivo loco solvenda."—Cfr. S. Alph., *Theol. Mor.,* l. IV, n. 850–856. Schwane, *Die theologische Lehre über d. Verträge,* pp. 155 ff.

37 Schwane (*op. cit.,* p. 156, n. 1) says: "Some derive the name *siccum* from the fact that this sort of business was unprofitable for the recipient of the bill; others think that the Venetians and the Genoese called it thus because it was drawn in appearance upon trans-oceanic trading places, but in reality was paid on dry ground in Venice or Genoa."

38 Linsenmann, *Lehrb. d. Moraltheol.,* p. 576.—Of the *iusta merces* of money-changers Noldin says: *"Communis aestimatio huius servitii iustam mercedem determinat, quae eo maior esse potest, quo maiores requiruntur expensae, ut campsor habitualiter campsariis satisfacere possit. Ceterum ad vitandam in cambiis et literis cambialibus iniustitiam vix aliud requiritur, nisi ut serventur statuta legis et proborum campsorum usus."* (*Summa Theol. Mor.,* Vol. II, 13th ed., p. 630).

6. *Loaning money at interest* is generally done by means of a contract in which a definite sum (*census, interesse*) is agreed upon as a recompense for the temporary use of the amount loaned.[39] The permissibility of taking interest can be demonstrated from Holy Scripture and ecclesiastical tradition.

a) In some passages of the Old Testament the taking of interest is strictly forbidden,[40] whereas in others it is forbidden only on loans made to brothers or the poor,[41] and in still others it is expressly permitted when the lenders were foreigners, *i. e.*, non-Israelites.[42] Since Holy Scripture, therefore, makes a distinction between Israelites and non-Israelites, and permits interest to be taken from the latter, it follows that interest cannot be *per se* forbidden by the moral law of nature, for if it were, God could no more have permitted the Jews to practice it than He could have permitted them to rob or murder foreigners.[43] Hence it is certain that

39 See the bibliography at the end of this Section, p. 314.

40 Cfr. Ps. XIV, 5; LIV, 12. J. Hejel, *Das alttestamentliche Zinsverbot*, Freiburg i. B. 1907, pp. 62 sqq.; Benzinger, *Hebräische Archäologie*, 2nd ed., pp. 292 sq.

41 Cfr. Ex. XXII, 25; Lev. XXV, 35 sqq.; Ez. XVIII, 8, 13; Ps. LXXI, 14.

42 Deut. XXIII, 19 sq.: "Thou shalt not lend to thy brother money to usury [*i. e.*, on interest], nor corn, nor any other thing: but to the stranger. To thy brother thou shalt lend that which he wanteth without usury [*i. e.*, interest]."—Cfr. Lev. XXV, 36; 2 Esdr. V, 7; Ehrlich, *Randglossen zur hebr. Bibel*, II, 95.—Cfr. P. Cleary, *The Church and Usury*, Dublin 1914, Ch. I, "Usury among the Hebrews," pp. 1–18.

43 Cfr. K. J. Hefele, *Beiträge zur Kirchengeschichte*, Vol. I, p. 36.

the Old Testament prohibition of interest-taking was purely a matter of civil law. The economic system of the Jews under Moses was such as to limit loans among themselves to cases of urgent necessity, whereas the gentiles borrowed Jewish capital for purposes of speculation and production. In view of this fact Moses allowed his people to take interest from strangers, but not from fellow-Hebrews. Thus we find the key for the correct solution of this much-debated problem in the Mosaic law.

The New Testament contains but one text that is commonly referred to interest-taking. It is Luke VI, 34 sq., where Christ is quoted as saying: "And if you lend to them of whom you hope to receive, what thanks are to you? for sinners also lend to sinners, for to receive as much (τὰ ἴσα). But love your enemies, do good and lend, hoping for nothing thereby (δανίζετε μηδὲν ἀπελπίζοντες)." This text, however throws no light on the problem of interest-taking, for in it Christ does not advise His hearers to refrain from taking interest, but to give away the capital itself.[44]

44 Luke VI, 34 sq.—Cfr. D'Annibale, *Summula Theol. Mor.*, Vol. II, 5th ed., p. 449: "*Lucae autem verba* [vi, 34] *huc non pertinere iam fere lippis atque tonsoribus notum est.*"—A. Vermeersch, S. J., *Quaest. de Iustit.*, 2nd ed., p. 452: "*Quod ad Novum Testamentum, nihil, ne specie quidem, continet.*"—P. Cleary, *The Church and Usury*, pp. 32 sqq.

Hence it may be safely held that the Bible does not prohibit interest-taking.

b) The Fathers of the Church and the early councils, on the other hand, sternly condemned the practice, mainly for reasons drawn from the Old and New Testaments and under the influence of the Greek and Roman philosophers of antiquity, who seem to have opposed the taking of interest.[45] Some of the Fathers expressly refer to Aristotle's well-known teaching that money is an unproductive thing. A good deal of the feeling displayed against interest-taking in the early Church was no doubt a result of the shameless way in which usury was practiced at that time. Most of the early ecclesiastical writers use "interest" and "usury" as synonymous terms. Beginning with the fourth century, however, the law against loaning money on interest was enforced only against clerics, whilst the laity were left free to do as they pleased.

The teaching of the Fathers on the subject of interest, says Dr. Funk, "was not without its defects, and the early Church seems to have made allowance for this fact when she employed her penal power in this matter against clerics only, and left the laity unmolested." [46]

45 Matth. V, 42; VI, 12; XVIII, 23–35; cfr. Luke VI, 34 sq.; the teaching of the ancient philosophers is discussed by Cleary, *The Church and Usury*, pp. 19 sqq., 26 sqq.

46 F. X. Funk, *Geschichte des kirchlichen Zinsverbotes*, p. 7.—Cfr. P. Cleary, *The Church and Usury*, pp. 37 sqq.

c) During the Catholic Middle Ages the prohibition of interest-taking was adhered to, at least in principle.

α) After the thirteenth century the question began to be dealt with in a more scientific way by the Scholastics, who, not content with the authority of Sacred Scripture and the Fathers, searched for arguments against interest-taking in reason and the natural law. One of the principal arguments they evolved was based on the nature of money. They held that money is a commodity which is consumed in the first use and has no other use which can give it an additional value, and that, consequently, in the business of exchange, its substance (*res*) cannot be separated from its use (*usus rei*), nor can it be separately valued without an offence against distributive justice. Thus a man who would sell to one buyer the substance of a bottle of wine (*vinum*), and to another the right to drink it (*usus vini*), would violate justice because he would sell the same commodity twice, or sell something which had no real existence. In other words, the fair price for a bottle of wine is the money equivalent of the value which the wine has for drinking, because the value of the first consumption of a commodity is the value of the commodity. Money, considered as a medium of exchange, they argued further, is a commodity

whose value is identical with the value of the first consumption of it, and, therefore, it is *per se* unlawful to charge a compensation (*usura*) for its use (*usus*). Hence the Schoolmen regarded all gain or profit derived from the use of an unproductive or unfruitful commodity, or from a loan as such (*lucrum ex mutuo ratione mutui*), as unjust and usurious.

St. Thomas puts it thus: "To take usury [interest] for money lent is unjust in itself, because this is to sell what does not exist, and this evidently leads to inequality, which is contrary to justice. In order to make this evident, we must observe that there are certain things, the use of which consists in their consumption: thus we consume the wine when we use it for drink, and we consume wheat when we use it for food. Wherefore in such like things the use of the thing must not be reckoned apart from the thing itself, and whoever is granted the use of the thing, is granted the thing itself; and for this reason, to lend things of this kind is to transfer the ownership. Accordingly, if a man wanted to sell wine separately from the use of the wine, he would be selling the same thing twice, or he would be selling what does not exist, wherefore he would evidently commit a sin of injustice. In like manner he commits an injustice who lends wine or wheat, and asks for double payment, *viz.*: one, the return

of the thing in equal measure, the other, the price of the use, which is called usury. On the other hand there are things, the use of which does not consist in their consumption: thus to use a house is to dwell in it, not to destroy it. Therefore in such things both may be granted: for instance, one may hand over to another the ownership of his house while reserving to himself the use of it for a time, or, *vice versa,* he may grant the use of the house whilst retaining its ownership. For this reason a man may lawfully make a charge for the use of his house, and, besides, reclaim the house from the person to whom he has granted its use, as happens in renting and letting it. Now money, according to the Philosopher, was invented chiefly for the purpose of exchange, and consequently the proper and principal use of money is its consumption or alienation, whereby it is sunk in exchange. Hence it is by its very nature unlawful to take payment for the use of money lent, which payment is known as usury; and just as a man is bound to restore other ill-gotten goods, so is he bound to restore the money which he has taken in usury." [47]

47 St. Thomas, *Summa Theol.,* 2a 2ae, qu. 78, art. 1. "*Accipere usuram pro pecunia mutuata est secundum se iniustum, quia venditur id quod non est. Per quod manifeste inaequalitas constituitur, quae iustitiae contrariatur. Ad cuius evidentiam sciendum est, quod quaedam res sunt quarum usus est ipsarum rerum consumptio, sicut vinum consumimus eo utendo ad potum et triticum consumimus eo utendo ad cibum. Unde in talibus non debet seorsum computari usus rei a re ipsa, sed cuicunque conceditur usus, ex hoc ipso*

β) All through the Middle Ages canonists and theologians were unanimous in condemning the taking of interest on loans made for consumption only (*mutua*), as distinguished from loans for use, reckoning money as an article of consumption. When, however, some *external reason* seemed to justify the taking of interest, it was not regarded as usury. Such a reason was called *titulus mutuo extrinsecus*. The principal "titles" held to justify interest were: (1) *damnum emergens, i. e.*, a loss or damage arising to the lender from the loan; (2) *lucrum cessans, i. e.*, profit lost to the owner by not having the money in his control; (3) *periculum sortis amittendae, i. e.*, the danger of losing the capital lent; and (4) *poena*

conceditur res et propter hoc in talibus per mutuum transfertur dominium. Si quis ergo seorsum vellet vendere vinum et vellet seorsum vendere usum vini, venderet eandem rem bis vel venderet id quod non est, unde manifeste per iniustitiam peccaret. Et simili ratione iniustitiam committit, qui mutuat vinum aut triticum petens sibi dari duas recompensationes, unam quidem restitutionem aequalis rei, aliam vero pretium usus, quod usura dicitur. Quaedam vero sunt quorum usus non est ipsa rei consumptio, sicut usus domus est inhabitatio, non autem dissipatio. Et ideo in talibus seorsum potest utrumque concedi, puta cum aliquis tradit alteri dominium domus reservato sibi usu ad aliquod tempus vel e converso cum quis concedit alicui usum domus reservato sibi eius dominio. Et propter hoc licite potest homo accipere pretium pro usu domus et praeter hoc petere domum accommodatam, sicut patet in conductione et locatione domus. Pecunia autem secundum Philosophum [Ethic., l. V, c. 5; Polit., l. I, c. 5–6] principaliter est inventa ad commutationes faciendas, et ita proprius et principalis pecuniae usus est ipsius consumptio sive distractio, secundum quod in commutationes expenditur. Et propter hoc secundum se est illicitum pro usu pecuniae mutuatae accipere pretium, quod dicitur usura, et sicut alia iniuste acquisita tenetur homo restituere, ita restituere tenetur pecuniam quam per usuram accepit." On the teaching of St. Thomas and the Scholastics generally see Cleary, *The Church and Usury*, pp. 78 sqq.

conventionalis, i. e., a penalty agreed upon between the contracting parties for remissness in repaying the money loaned. Where one of these "titles" could be alleged, it was permissible to demand and receive a moderate charge over and above the capital lent. This charge was not paid for the use of the money loaned, but for the danger incurred by the lender, or to indemnify him for the loss he had sustained and which he was not bound to take upon himself gratuitously.[48]

48 P. Cleary, *The Church and Usury,* "Extrinsic Titles," pp. 91–105.—Gury, *Comp. Theol. Mor.,* I, n. 818: *"Damnum emergens est detrimentum quod patitur mutuans occasione mutui proximo praestiti. Si mutui causa mutuans damnum patitur, legitimus est titulus aliquid supra sortem seu rem mutuatam accipiendi. Ratio est, quia aequum non est, ut damnum ex mutuo feras; nemo enim tenetur cum damno proprio beneficium praestare nisi in proximi necessitate."—Ibid.,* n. 819: *"Lucrum cessans est id quod mutuans servata re vel pecunia sua lucratus fuisset, si eam in alio contractu licito adhibuisset. Lucrum cessans legitimus est titulus aliquid supra sortem exigendi. Ratio est:* 1. *Quia tunc vere damnum emergens habetur;* 2. *Quia spes lucri est mutuo extrinseca et proinde pretio aestimabilis."—Ibid.,* n. 820: *"Periculum sortis est timor fundatus, ne sors recuperari nequeat. Duplex periculum est:* 1. *Commune, omni mutuo intrinsecum, v. g. timor, ne cuncta bona mutuatarii incendio pereant etc.* 2. *Extraordinarium, v. g. si mutuum detur prodigo vel homini dubiae fidei aut naviganti aut impensae magnae in sorte recuperanda timeantur." Ibid.,* n. 821: *"Pro periculo communi nihil exigi potest. Ratio est, quia tale periculum est omnino mutuo intrinsecum et proinde ab ipso separari nequit. Periculum extraordinarium est titulus legitimus iuxta communiorem et probabiliorem sententiam. Ratio:* 1. *Quia si spes lucri aestimabilis sit, a fortiori periculum damni probabilis;* 2. *Quia pluris aestimantur res in tuto quam in periculo repositae;* 3. *Constat ex decisione S. C. de Propaganda Fide pro missionariis sinensibus ab Innoc. X approbata (cf. S. Alph.,* l. III, n. 765 [ed. Gaudé, II 211]). *Excipe:* 1. *Si mutuatarius sit pauper, quia tunc praeceptum mutui urget;* 2. *Si mutuatarius sortem per pignus assecuret, quia in eo casu periculum cessat."—Ibid.,* n. 822: *"Poena conventionalis consistit in hoc, quod mutuatarius se obliget ad aliquid supra sortem solvendum, si tempore praefixo illam non restituat. Poena conventionalis legitimus est titulus accipiendi praeter sortem id de quo conventum est. Ratio est, quia ita consulitur firmitati contractus et simul ne-*

Other and more practical exceptions from the law prohibiting interest were made in favor of those who purchased *rentes* (*supra,* pp. 293 sqq.) and in favor of State loans or charitable institutions (*montes pietatis*).[49] Thus it came about that, towards the end of the Middle Ages, the law against interest was more often violated than respected, for while Church and State still insisted that it was forbidden to take interest on loans made purely for consumption (*ratione mutui*), in matter of fact interest was quite generally demanded and taken on the strength of various "extrinsic titles," which practically neutralized the prohibition.

d) In modern times the ancient definition of usury was still adhered to, not only by Catholic theologians,[50] but also by Luther and Zwingli, who forbade their followers to take interest on loans.[51]

glegentia mutuatarii praecavetur. Conditiones requisitae sunt: 1. Ut mora debitoris sit notabilis et culpabilis; 2. Ut poena sit moderata et culpae proportionata; 3. Ut absit animus usurarius, id est, ut mutuans moram alterius culpabilem non desideret."—Funk, *Zins und Wucher,* pp. 119 sqq.; Ratzinger, *Die Volkswirtschaft,* 2nd ed., pp. 278 sqq.; Göpfert, II, 172 *sqq.*

49 Denzinger-Bannwart, n. 739.—Funk, *Zins und Wucher,* pp. 62 sqq., 80 sqq.—Idem, *Geschichte des kirchl. Zinsverbotes,* pp. 42 sqq.—H. Holzapfel, O. F. M., *Die Anfänge der Montes Pietatis,* Munich, 1903.

50 H. Busembaum, *Theol. Mor.,* l. III, tr. 5, c. 3, dub. 7: *"Usura est lucrum immediate praeveniens ex mutuo, ita ut mutuans supra sortem (i. e. summam capitalem) lucretur aliquid, quod sit pecunia aestimabile, ita ut lucrum tale praecise intendatur ratione mutui. Quod plane iniquum est et grave peccatum contra ius humanum et divinum, quum mutuans acquirat lucrum ex re iam non amplius sua, quia res mutuata iam transiit in dominium mutuatarii, ut patet ex definitione. Et regula generalis est: Omne factum vel gravamen sive onus additum mutuo praeter id quod ei proprium et intrinsecum est, reddit contractum usurarium."*—Cfr. St. Alphonsus, *Theol. Mor.,* l. III, n. 758–759 (ed. Gaudé, II, 203 sqq.); Gury I, n. 815-817.

51 P. Cleary, *The Church and Usury,* pp. 147 sqq.; Walther, *Thesen über den Wucher,* St. Louis, 1876.

But in spite of many synodal decrees, the capitalistic function of money led to a change in ideas and practice. Of particular importance in the process of evolution was the practice of selling *rentes* and the recognition of the so-called *contractus trinus*,[52] *i. e.*, a combination of three different contracts, one social and the other two insurance. In evolving this new form of contract, the Scholastics, in Funk's opinion, did a great thing: "Though they had not succeeded in storming the fortress of the anti-interest law, they had surrounded it from two sides and laid a double breach for modern Capitalism. The capitalist through this teaching was enabled to invest his money profitably by means of a *contractus trinus*, which was always feasible when there was a question of lending capital for productive purposes. Or he could buy *rentes*, since this species of contract was now no longer hedged in with the former limitations, but the contracting parties were left free to make whatever agreement they chose. The seller could pay his indebtedness at any time, and the buyer was free to demand his capital back whenever he wished. The only precaution that had to be observed was to avoid the terms 'loan' and 'interest,' for paying interest on loans was still regarded as usury and forbidden under pain of mortal sin." [53]

52 See *infra*, pp. 329 sq.; *Cleary, The Church and Usury*, pp. 126 sqq.

53 Funk, *Geschichte des kirchl. Zinsverbotes*, pp. 57 sqq., 60.—

Soon the civil governments revoked the laws forbidding interest-taking and confined themselves to punishing usury in the modern sense, and the Church and her theologians acknowledged the *titulus legis civilis* as an additional reason justifying interest. The last important papal decision on the subject is the encyclical letter of Benedict XIV, *"Vix pervenit,"* issued November 1, 1745. It condemns taking interest on a loan merely for the sake of the loan (*omne lucrum ex mutuo ratione mutui*), but recognizes the extrinsic titles enumerated above.[54]

A substantial mitigation of ecclesiastical discipline was initiated by the Apostolic See in the early part of the XIXth century, when it repeatedly declared, in response to inquiries, that those who took interest at a moderate rate should not be disturbed in their peace of mind, provided they were ready to submit to such decisions as the Church might see fit to make on the subject in future.[55] At first these declarations were limited by the clause that interest might be taken to the extent permitted by the civil laws of the respective country (*titulo legis civilis*), but this

IDEM, *Zins und Wucher,* pp. 84 sqq.

54 The text of the encyclical in Migne, *Theol. Cursus Compl.,* XVI, 1059; cfr. Busembaum, *Theol. Mor.,* II, 59 sqq.; St. Alphonsus, *Theol. Mor.,* ed. M. Haringer, Vol. III, Ratisbon 1846, pp. 356 sqq.; Denzinger-Bannwart, n. 1609–1612; Cleary, *The Church and Usury,* pp. 160 sqq.

55 *"Non esse inquietandos, dummodo parati sint stare mandatis Sanctae Sedis."*—Cfr. Cleary, *The Church and Usury,* pp. 168 sqq., 174 sqq.

clause, too, was soon omitted, and the permission to take interest was extended to clerics, monasteries, and ecclesiastical foundations.[56]

The New Code expressly says: *"Si res fungibilis ita alicui detur ut eius fiat et postea tantundem ei in eodem genere restituatur, nihil lucri, ratione ipsius contractus, percipi potest; sed in praestatione rei fungibilis non est per se illicitum de lucro legali pacisci, nisi constet ipsum esse immoderatum, aut etiam de lucro maiore, si iustus ac proportionatus titulus suffragetur,"* [57]—that is to say, in loaning goods to be consumed by the borrower, when return is made in the same kind, no interest may be charged by reason of the contract itself; but in loaning fungible goods, a reasonable interest may be charged if there is a just and proportionate title. "The quintessence of this canon, according to Father Augustine, O. S. B., is "that interest on loans is permitted according to the usual and legal rate, not precisely by reason of the contract, but by reason of the risk incurred and other circumstances." [58]

The changed attitude of the Church on interest-taking is perfectly justified in view of the fact

56 *S. C. Offic.*, decree of Feb. 28, 1872 (*Collectio Lacensis*, VI, 690); cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 823 sqq.

57 *C. I. C.*, can. 1543.

58 *A Commentary on the New Code of Canon Law*, Vol. VI, p. 609. Fr. Augustine refers to Benedict XV's encyclical *"Vix pervenit"* and to the instructions of the S. C. of the Propaganda of 1873 (*Coll. S. C. P. F.*, n. 1393), where, he says, "the documents referring to these subjects are given and the question is treated *ex professo*."

that money is no longer, as it was before the dawn of the industrial era, a mere means of exchange for articles of consumption and a measure of their value, but *the chief form of capital.* Today "no wealth-producing object of importance can be undertaken without a supply of money," says Fr. Slater, "and money is now readily exchangeable for land, machinery, means of distribution, and other instruments for the production of wealth. Capital is one of the factors necessary for the production of wealth, and it is the chief instrument of its production. Money, then, looked upon as capital, is not a mere fungible; it is not a commodity which is consumed in the first use of it; it is the main instrument necessary for the production of wealth, and it thereby acquires a new function: it becomes virtually productive and puts on the nature of land and machinery, with which it is so readily exchangeable. Indeed now-a-days land can hardly put forth its natural productivity without the aid of capital, and machinery cannot be worked for the production of wealth without it. It follows then that now-a-days money is not merely a means of exchange, it is also an instrument of production, and just as money may be charged for the use of land, or of a house, so money may be charged for the use of money. Money now has its fair and reasonable price like any other commodity, and the sin

of usury is committed not by taking a fair and reasonable interest for a loan, but by exacting excessive interest." [59]

"If," says Father H. Pesch, S. J., by way of a *demonstratio ad absurdum,* "moderate interest were objectively and *per se* forbidden by the moral law of nature, the Church would not only have mitigated her demands in favor of a generation living under Capitalism, but she would be tolerating, positively and for all classes of human society, a most atrocious crime, namely, usury, which is admittedly opposed to the natural law and, in consequence, intrinsically and essentially evil." [60]

59 Slater, *A Manual of Moral Theol.,* I, 515 sq.

60 H. Pesch, *"Zinsgrund und Zinsgrenze,"* in the *Zeitschrift für kath. Theologie,* Innsbruck, 1888, p. 37; cfr. P. Cleary, *The Church and Usury,* pp. 200 sqq.—The whole problem is admittedly a thorny one, and though many solutions of it have been proposed, none has found general acceptance. One of the latest writers on the subject, Fr. J. B. McLaughlin, O. S. B., thinks the dispute arose from ambiguity about the term *mutuum.* Benedict XIV, who, by the way, in his encyclical letter spoke with authority as teacher of the universal Church (*"ne catholicae doctrinae puritas, cuius depositum nobis est a Christo concreditum, hac erroris labe foedaretur"*), used the term *mutuum* in its precise technical sense, in contradistinction to investments. His meaning was that "if the money passed *ut ea ditescant,* then it is not *mutuum,* but *diversae prorsus naturae a mutui natura.* If it is *mutuum,* then it is not *ut ea ditescant;* the purpose for which the money is to be used does not enter into a *mutuum* contract, which *necessario in dati atque redditi aequalitate versatur,* and in nothing else. . . . The root difference seems to be this. There is such a thing as enriching yourself by impoverishing your neighbors. And there is such a thing as enriching yourself by enriching your neighbors. The first is usury, the second is the investing of capital. My neighbor needs a loan; I shall have to help him; I will take the opportunity to annex some of his belongings. That is usury. I have not added to the wealth of the country; I have merely transferred some of it from his pocket to mine. On the other

e) So much from the point of view of justice. Charity, of course, imposes additional duties. With a hard pressed debtor the creditor should not only have patience, but is bound *ex caritate,* in proportion to his own ability and the degree of his creditor's necessity, to aid him by giving alms or renouncing his legitimate compensation for

hand is the fact expressed in such sayings as, 'I could make my business a success if I had more capital'; 'This country only needs capital to make it prosperous'; 'If these islanders had a steamboat to take their fish to a market; if a bridge were built here, a railway there, a creamery opened, a pit sunk, the whole district would become prosperous.' It is in this way that countries have become rich, and that their standard of living has been raised. Money employed in these ways is employed for the enriching of others; and you who so employed your money have a right to your share of the new riches. Not simply to a return of your money; but to a share in the increased wealth that is flowing in to us each year. Further; in a highly 'developed' country, the existing machinery of production must be kept efficient merely to maintain the present standard of living, apart from any question of improving it. Therefore there is a continuous demand for new capital, for the purposes of upkeep and replacement; and you who provide this capital are saving the country from impoverishment, and can claim a share in the wealth you are helping to produce. A 'legal rate' of interest, mentioned in the Canon Law, would seem to be an attempt to estimate what your fair share should be. This seems to have been in St. Thomas's mind when he wrote of the man who takes up a business for the public utility, that the country may have what it needs for its life; and seeks a profit, not as his final purpose, but as his reward for what he has done. Similarly Benedict XIV says, 'It cannot be doubted that in these contracts we have a manifold lawful method and system for preserving and improving human intercourse and profitable trade, to the public good.' (*"Vix pervenit,"* § 3, 4; Denzinger-Bannwart, n. 1478). Whereas usury causes poverty: *'Absit enim a Christianorum animis, ut per usuras aut similes alienas iniurias florere posse lucrosa commercia existiment.'* (*ibid.*). The natural way to help a man in a difficulty is to give him the money he needs and let him make the best he can of it, binding him to return you the same amount later on. Whereas the natural way to help to develop the country is to lend your money for that purpose to some one who can use it for that purpose. The *giving* in the one case and *lending* in the other do not at first glance seem to be essentially tied up with the two contrasted purposes; but St. Thomas and Benedict XIV and the Codex unanimously put this distinction at the very root of the matter. In the Codex we read, *'Si res ita alicui detur ut eius fiat,'* in contradistinction to *'sed in praestatione rei';* and St. Thomas and Bene-

damage sustained or profit lost. A loan without interest made to a person in need is a true act of charity, and to demand interest in such a case would be to enrich oneself unjustly at the expense of a needy fellowman. For the distinguishing mark of usury may be owing to the economic condition of the borrower.

The *lawful rate of interest,* like the fair and reasonable price of other commodities, depends upon circumstances and, proximately, upon the common consent of intelligent men.[61] For the farmer who earns no more than three or four per cent. on his capital, says Ratzinger, five or six per cent. on loans would be a usurious rate of interest, whereas the merchant who makes a profit of ten per cent., can pay from four to six, and the manufacturer or trader who cleans up a net gain of from thirty to forty per cent., can be charged from twelve to twenty per cent. for short term loans without usury.[62] Of course, in de-

dict XIV are equally explicit. Unfortunately, besides the two processes I have mentioned, enriching yourself by impoverishing others, and enriching yourself by enriching others, there is a third—enriching yourself by enslaving others. You can use your capital, not to enable me to develop my business, but to buy up my business and make me pay you revenue if I want to continue it. It is this process of gaining control of all the means of livelihood, and taking toll of the fruits of all men's industry, that seems to many to be the main occupation of the capitalist at present. After the war, a cotton-mill valued by its owners at three and a half millions was bought by a syndicate for five millions. Those who work that mill in future have to pay interest on the extra million and a half. One reads of an American millionaire keeping a staff of experts to advise him on one point, the new businesses in which his yearly revenues are to be invested and which are to pay him tribute for the future. Leo XIII speaks of 'the concentration of so many branches of trade in the hands of a few individuals; so that a small number of very rich men have been able to lay upon the teeming masses of the poor a yoke little better than that of slavery itself.' This party 'holds in its grasp the whole of labor and trade; manipulates for its own benefit and its own purposes all the sources of supply.' His remedy is 'to induce as many as possible of the humbler classes to become owners.' (*The Pope and the People,* pp. 179, 208)."

61 Slater, I, 515.

62 Ratzinger, *Die Volkswirtschaft,* 2nd ed., p. 261 sq.—Cfr. Seneca, *De Benefic.,* l. VI, c. 13: *"Non sum tam iniquus, ut nihil ei debeam,*

ciding this question, the civil laws of each country have to be taken into consideration.[63]

READINGS.—Th. Meyer, S. J., *Inst. Iuris Nat.*, Vol. II, pp. 221 sqq.—Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., pp. 788 sqq.—St. Alphonsus, *Theol. Mor.*, l. III, n. 793 sqq. (ed. Gaudé, I, 232 sqq.).—F. X. Linsenmann, *Lehrbuch der Moraltheol.*, pp. 552 sqq.—V. Cathrein, S. J., *Moralphilosophie*, Vol. II, 5th ed., pp. 358 sqq.—J. Schwane, *Die theol. Lehre über die Verträge*, pp. 120 sqq.—M. Cronin, *The Science of Ethics*, Vol. II, pp. 315 sqq.

On the WAGE CONTRACT: F. M. Schindler, *Der Lohnvertrag*, Vienna 1892.—K. Eberle, *Arbeit und Lohn*, Stans 1894.—Ch. Antoine, *Cours d'Économie Sociale*, 7th ed., Paris 1922, pp. 589 sqq.—Theo. Meyer, S. J., *Die Arbeiterfrage und die christlich-ethischen Sozialprinzipien*, 4th ed., Freiburg i. B. 1904.—F. X. Eberle, *Kath. Wirtschaftsmoral*, Freiburg i. B. 1921, pp. 53 sqq.—D. Merino, *Natural Justice and Private Property*, Eindhoven (Holland), 1922, pp. 103 sqq.—J. A. Ryan, *A Living Wage*, N. Y. 1906.—O'Grady, *A Legal Minimum Wage*, Washington 1915.—J. A. Ryan, *Social Reconstruction*, N. Y. 1916, pp. 323 sqq.—H. Parkinson, *A Primer of Social Science*, N. Y. 1913, pp. 160 sqq.—J. M. Harty, "The Living Wage: Its Ethical Basis," in the *Irish Theol. Quarterly*, Vol. II (1907), Nos. 6, 8; Vol. III, (1908).—W. McDonald, "The Living Wage," *ibid.*, Vol. III (1908), No. 9.

On STRIKES AND LOCKOUTS: A. Lehmkuhl, S. J., *Arbeitsvertrag und Streik*, 4th ed., Freiburg 1904—H. Parkinson, *A Primer of Social Science*, pp. 128 sqq.—M. Cronin, *The Science of Ethics*, pp. 354 sqq.—C. S. Devas, *Political Economy*, pp. 548 sqq.—J.

qui cum mihi utilis esset, fuit et sibi. Non enim exigo, ut sine respectu sui mihi consulat, immo etiam opto ut beneficium mihi datum vel magis danti profuerit, dummodo is qui dabat, duos intuens dederit et inter me seque diviserit. Licet id ipse ex maiore parte possideat, si modo me in consortium admisit, si duos cogitavit, ingratus sum, non solum iniustus, nisi gaudeo hoc illi profuisse, quod proderat mihi. Summae malignitatis est, non vocare beneficium, nisi quod dantem aliquo incommodo afferit." (*Opera Omnia*, I, ed. I. Lipsius, Amsterdam 1672, p. 794).

63 A. Vermeersch, S. J., *s. v.* "Usury" in the *Catholic Encyclopedia*, Vol. XV, pp. 235 sqq.; Maingie, *La Théorie de l'Intérêt et ses Applications*, Brussels, 1911; H. Parkinson, *A Primer of Social Science*, p. 157; P. Cleary, *The Church and Usury*, Dublin 1914.

Kelleher, "The Morality of Strikes," in the *Irish Theol. Quarterly,* Vol. VII (1912), No. 25.

On INTEREST-TAKING: F. X. Linsenmann, *Lehrbuch der Moraltheol.,* pp. 556 sqq.—V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 362 sqq.—A. Vermeersch, S. J, *Quaestiones de Iustitia,* 2nd ed., pp. 450 sqq.—D'Annibale, *Summula Theol. Mor.,* Vol. II, 5th ed., pp. 446 sqq., Rome 1908.—F. X. Funk, *Zins und Wucher,* Tübingen 1868.—IDEM, *Geschichte des kirchlichen Zinsverbotes, ibid.,* 1876.—IDEM, *Zur Geschichte des Wucherstreites, ibid.* 1901.—H. Hay, *De Mutuo et Usura,* Angers 1902.—D. Lanna, *Delle Usure,* Giuliano 1902.—F. Schneider, *Das kirchliche Zinsverbot und die kuriale Praxis im 13. Jahrhundert* (in *"Festgabe.....H. Finke gewidmet"*), Münster i. W. 1904, pp. 129 sqq. —B. Duhr, S. J., *Geschichte der Jesuiten in den Ländern deutscher Zunge,* Vol. I, Freiburg i. B. 1907, pp. 713 sqq.—Schaub, *Der Kampf gegen den Zinswucher,* pp. 26 sqq., 61 sqq.—K. Lessel, *Die Entwicklungsgeschichte der kanonistisch-scholastischen Wucherlehre im 13. Jahrhundert,* Luxemburg 1905.—M. Hainisch, *Die Entstehung des Kapitalzinses,* Leipsic and Vienna 1907.—L. Garriguet, *Prêt, Intérêt et Usure,* Paris 1907.—Seipel, *Die wirtschaftsethischen Lehren der Kirchenväter,* pp. 162 sqq.—F. X. Eberle, *Kath. Wirtschaftsmoral,* pp. 65 sqq., Freiburg i. B. 1921. —Jos. Landner, *Das kirchliche Zinsverbot und seine Bedeutung,* Graz 1918.—P. Cleary, *The Church and Usury,* Dublin 1914.— J. M. Harty, "Historical Evolution of the Catholic Teaching on Usury," in the *Irish Theol. Quarterly,* Vol. V (1910), No. 17.— IDEM, *ibid.,* Vol. VII (1912), No. 28.—J. A. Ryan, *The Church and Interest-Taking,* St. Louis 1910.

SECTION 6

SUBSIDIARY CONTRACTS

A subsidiary or insurance contract (*contractus subsidiarius sive cautio*) is one by which one contracting party takes upon itself a certain danger or risk for the benefit of the other, in consideration of a specified payment. The principal kinds of subsidiary contracts are: insurance, security, and bailment (*pawn or pledge*).

1. *Insurance contracts* are contracts by which the insurer undertakes to make good any loss suffered by the insured through the happening of some accident, in consideration of the payment of a fixed sum, either at once or at periodical intervals, or promises to pay a given sum to another upon the happening of a particular event contingent upon the duration of human life.[1]

These contracts (*contractus assecurationis*) are called *subsidiary*.[2]

1 Slater, *A Manual of Moral Theology*, Vol. I, p. 554.

2 J. P. Gury, S. J., *Comp. Theol. Mor.*, Vol. I, n. 878: *"Contractus illi dicuntur subsidiarii, quia adhibentur ad securitatem alterius contractus."*—Cfr. H. Busembaum, *Medulla Theol. Mor.*, l. III, tr. 5. c. 3, dub. 15: *"Contractus assecurationis est, quo quis alienae rei periculum in se suscipit obligando se vel gratis vel pro certo pretio ad eam compensandam, si pericrit. Quod si gratis fiat, est gratuita promissio, si pretio, est quasi emptio, qua assecurans vendit*

a) The insured party (*assecuratus*) is bound to pay the stipulated premium. The insurer (*assecurator*), on the other hand, pays the sum agreed upon only in case the accident in question actually happens.

To render an insurance contract valid it is required that the insured object really exists, that all circumstances material to the contract are made known to the insurer in order to enable him to form an accurate judgment as to the risks and merits of the case, that the insurer is able to pay the promised insurance if and when it falls due, that the premium paid is in proportion to the risk incurred, and that the stipulated terms of the contract contain nothing illicit.[3]

According to the nature of the accident against which insurance is taken we may distinguish *marine, fire, hail, storm,* and *accident insurance.*[4]

A special kind of insurance is that by which the insurer guarantees to pay a stipulated sum either to the insured if he lives out the determined period, or to his

suam obligationem praestandi alteri rem eius indemnem. Ad eius iustitiam requiritur, ut eventus rei sit incertus utrique, saltem quoad notitiam quam de eo habent, quia alioqui non servaretur aequalitas." (Tournai 1876; I, 267).—Cfr. Göpfert, *Moraltheol.*, Vol. II, pp. 206 sqq.

3 Gury, *op. cit.*, I, n. 882: "*Conditiones ad assecurationem requisitae sunt sequentes: 1. Ut pretium sit periculo proportionatum; 2. Ut periculum sit verum et utrique parti aequaliter notum; 3. Ut assecuratus servet omnes contractus conditiones; 4. Ut assecurator habeat, unde solvere possit.*"

4 The various conditions under which insurance is issued are defined by statutory law and for the U. S. are summarized, e. g., by Boles in *Putnam's Handy Law Book,* pp. 6, 37, 124 sqq., 167 sqq., 302.

heirs or beneficiaries if he dies before its expiration (life insurance). Not a few present-day insurance policies are really no more than savings accounts.

b) Insurance contracts generally have been devised with the object of relieving undeserved misfortune. They do not indicate a want of confidence in Divine Providence, but are merely proofs of a prudent foresight and means of self-help.[5]

"The social advantages of insurance," says Linsenmann, "are best attained if the practice is extended as widely as possible, because in that case the effects of serious catastrophes are distributed amongst many and consequently felt less severely by the individual, and for the further reason that the contribution of the individual becomes smaller, whereby the danger of fraud is minimized and participation in the benefits of insurance is made easier. The contribution of the individual beneficiary then appears like a slight tax, by paying which he not only acquires a feeling of security, but likewise aids more effectively than he could possibly do by alms, in assisting those who suffer from untoward events. Who does not feel relieved when he hears after a destructive fire that those whose property was destroyed were adequately insured?" [6]

c) Some writers refuse to regard *life insurance* as a *contractus assecurationis* because it does not in their opinion safeguard the subject against danger or risk. But on closer inspection we shall find that life insurance *is* insurance

5 See this *Handbook*, Vol. III, pp. 109 sqq.—Cfr. G. v. Hertling, *Kleine Schriften*, pp. 341 sqq.

6 F. X. Linsenmann, *Lehrbuch der Moraltheol.*, p. 581.

against danger or risk. "He who insures his life," says a recent writer, "does two things: He invests his savings with an insurance company and receives as an equivalent the promise that the company will, in case he dies prematurely, pay out to his heirs the amount paid in, plus the amount necessary to make it equal to the sum which the insured would have received had he attained the age stipulated in the contract, or which he has to expect according to the mortality tables. Conceived thus as a savings account combined with an insurance contract, life insurance clearly partakes of the nature of a *contractus assecurationis.*" [7]

Life insurance is of great help to farmers and merchants, to whom it affords a means of paying their debts without amortization, within a reasonable period of time, if the obligation is not excessive and the premiums can be met. Under these suppositions life insurance aids in the payment of debts and strengthens the credit of the insured.

d) There has been talk of late of the advisability of *insuring workingmen against unemployment.*

"It is the duty of the State," says Fr. Cuthbert,

7 Cfr. V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 385 sq.—Huppert, *Der Lebensversicherungsvertrag,* pp. 169 sqq.; K. Wagner, *Das Problem vom Risiko in der Lebensversicherung,* Jena 1898; A. S. Bolles, *Putnam's Handy Law Book,* pp. 167 sqq.

"to see that security against unemployment enters into the bargain between employers and employed, and it is not jeopardized by merely arbitrary action of either employer or worker. Thus, for instance, when new processes or methods are introduced into any industry, the State should insist that the change be made so as to minimize the danger of the worker finding himself without employment as a consequence of the change. The proper action of the State is, however, limited. It cannot so control the conditions of industry as to leave no personal freedom to either employer or worker in the control of labor; for that would cut at the very root of personal responsibility and consequently of real personal liberty. But it can protect both employer and worker against the mere arbitrariness of physical or moral force, and it can also give opportunities which conduce to the fulfilment of moral obligations. The giving of these opportunities is indeed its most positive contribution to economic freedom, and more directly constructive than any restrictive or 'police' intervention." [8]

In working out a practicable system of unemployment insurance those concerned should take proper precautions to safeguard the interests of the diligent and sober workman, so that he will

8 *The Ethics of Labor*, pp. 17 sq.

not be compelled to carry an extra burden because of the sloth and extravagance of his fellow-workmen.

e) *Insurance against the risks of child-birth* is another new idea. This no doubt has certain advantages, provided it be so carried out that it does not become a premium upon fornication and that deserving mothers are not forced to bear the burdens of undeserving prostitutes.[9]

2. Giving *bail* or becoming *surety* for the debt of another if he should fail to pay, is a contract commonly called by moralists *fideiussio*. It can be made only by one who is qualified to act in his own name and who has ample means to satisfy the obligations incurred. Minors cannot become surety without the consent of their guardians, nor religious without the permission of their superiors, nor wives without the consent of their husbands.[10] To give bail knowing that one is not qualified to do so, or has not sufficient means to meet the obligation assumed, is a mortal sin whenever it is doubtful whether the debtor

9 Göpfert *Moraltheol.*, Vol. II, p. 210.—Cfr. A. Buckeley, *Zur Frage der Mutterschaftsversicherung*, Ratisbon 1908; J. Mausbach, *Der christliche Familiengedanke im Gegensatz zur modernen Mutterschutzbewegung*, Münster i. W. 1908.

10 Ecclus. VIII, 16; XXIX, 27.—Cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 879, 1: *"Nemo fideiussor esse potest, nisi liberam bonorum ad hoc sufficientium administrationem habeat, ut patet. . . . Qui principaliter obligari non possunt, fideiubere non valent; tales sunt pupillus, minor, religiosus, uxor, saltem sine consensu tutoris, curatoris, superioris, mariti."*—*Ibid.*: *"Qui principaliter obligari non possunt, fideiubere non valent; tales sunt pupillus, minor, religiosus, uxor, saltem sine consensu tutoris, curatoris, superioris, mariti."*

himself will be able to pay.[11] He who has become surety for another (*fideiussor*) must satisfy the creditors (*creditores*) if the debtor (*debitor*) is unable to do so, but has the right of recourse if the latter recovers financially. A *fideiussio* also binds the heirs of the surety. The debtor is bound to repay his surety as soon as he is able and, in addition, must indemnify him for whatever losses he may have sustained through the debtor's fault.[12]

To become surety for another may be a true act of charity, but carelessness in this regard is anti-social, as it not only favors recklessness in business, but is apt to ruin both creditor and debtor.[13] It is wrong to borrow if one does not know whether one will be able to repay the debt; least of all should one borrow from a person who is himself in need.[14]

3. *Pawn* or *pledge* is a contract by which goods or chattels are delivered to another (pawnee) as

11 P. G. Antoine, *Theol. Mor. Univ.*, tr. *De Contract.*, P. II, c. 10, qu. 3, n. 5: *"Peccat graviter, qui certus de sua impotentia ad solvendum pro alio eius se fideiussorem constituit, putans fieri posse, ut debitor non sit solvendo par. Nam creditorem iniuste decipit falsam rei securitatem offerendo et dat ei occasionem periculi ac damni."* (Douai, 1751, Vol. III, 601).

12 Prov. XX, 16; XXVII, 13.—Cfr. Gury, *op. cit.*, I, n. 879, 3: *"Fideiussor tenetur erga creditores de omnibus obligationibus debitoris, sed solummodo in illius defectu seu impotentia et quidem iuridice probata. Fideiussor, qui pro debitore solvit, omnibus creditoris iuribus subrogatur et proinde in hunc debitorem recursum habet, ut ab eo repetat ea, quae eius loco solvere coactus fuit. Obligatio fideiussoris ad ipsius heredes transmittitur, quia est obligatio realis, non vero mere personalis."*—A. Lehmkuhl, *Theol. Mor.*, Vol. I, p. 780.

13 Prov. VI, 1–5; XI, 15; XVII, 18; Ecclus. XXIX, 18–24.

14 Cfr. G. E. Lessing, *"Minna von Barnhelm,"* Act III, Scene 7.

security for money borrowed from him.[15] The pawn is called *pignus*. If it is an immovable object, which is not actually transferred, but merely given over in writing, it is called mortgage (*hypotheca*).

As regards the respective rights and duties of pawner and pawnee, the following rules may be stated:

a) The pawner must pledge an object that is fit to serve the purpose;[16] he must indemnify the pawnee for any expense the latter may incur for the preservation of the pawned object, and he may not demand that object back before the debt is paid, except in case the pawnee makes wrong use of it.

b) The pawnee is bound to take ordinary care in the custody of the pledge (*pignus*), he may not use it without the consent of the pawner, must deduct any fruits derived from it, and may not sell the pledged object unless the pawner is guilty of inexcusable negligence, and even then only after giving him due warning.

When the debt for securing which the pledge has been given, is paid, the pawnee must restore

15 Slater, *A Manual of Moral Theol.*, Vol. I, p. 540.

16 Busembaum, *Medulla Theol. Mor.*, l. III, tr. 5, c. 3, dub. 16: *"Non possunt oppignorari, quae non possunt vendi, v. g. ecclesiae. Immobilia uti et mobilia pretiosa cultui divino dicata, v. g. calices, casulae, etc., non possunt oppignorari nisi in necessitate, quia tunc etiam vendi possunt, ut ecclesiae et indigentibus subveniatur."*

the pawn with all its accruing fruits to the pawner, but he may deduct necessary expenses.[17]

c) *Pawnbrokers* form a special kind of pawnees, whose business in most countries is regulated by statutory law. The statutes usually fix the rate of interest which the pawnbroker may charge, and also determine the time after which he can dispose of the article pawned. In many States, says Fr. Michael Martin, S. J., on sums of one hundred dollars or less, three per cent. per month for the first six months is charged, and two per cent. per month for the following six months. When the sum loaned exceeds one hundred dollars, two per cent. per month for the first six months, and one per cent. for the next six months is the usual charge.

Pawntickets are generally good for one year only, but may be renewed upon payment of the interest.[18]

The sale of goods entrusted to a pawnbroker is usually regulated by statute; if no law exists, and there is no agreement between the parties, the sale must be public, after due notice of time and place. If there is any surplus from the sale, the pawnee must pay it to the pawner and not apply it to another debt that he may owe.[19]

d) The practice of *pawning chattels* is open to many objections, moral as well as economic. Pawnbrokers as a rule are only too ready to take advantage of the necessity of the poor and to charge usurious rates of interest. Ease in obtaining money on chattels leads many to be extravagant, and Linsenmann is therefore right when he

17 St. Alphonsus, *Theol. Mor.*, l. III, n. 913–916 (ed. Gaudé, II, 317 sqq.).—Cfr. Gury, *Comp. Theol. Mor.*, I, n. 880.

18 See Slater's *Manual of Moral Theol.*, Vol. I, pp. 541 sq.

19 Bolles, *Putnam's Handy Law Book*, p. 47.

says that, from the economic point of view, it would be better, as a rule, to sell an article outright than to pawn it, because one would realize more for it than at the pawnbroker's, where as a rule it remains unredeemed. Pawning necessary articles, such as household goods, is generally the beginning of economic ruin.

e) Borrowing money on a *mortgage* is a different matter. Whereas a pawned chattel must be regarded as an unproductive thing, a farm or a house is of the nature of capital and bears immediate fruits. As a consequence, the creditor is secured against loss, as he runs no risk (*periculum sortis*), and therefore can be satisfied with a lower rate of interest, while the debtor has a chance of paying back his debt out of the revenues of the property itself without employing extraordinary financial means, which is not the case with chattels.[20]

f) *Montes pietatis* are charitable institutions, usually conducted under ecclesiastical auspices, which lend money at a low rate of interest, or without interest, upon objects left in pawn, with a view to protecting the poor from usurers. Being charitable institutions, they lend only to people who are in need of funds to pass through some financial crisis, as in cases of general scarcity of food, misfortunes, etc. They originated in the Middle Ages, when it was difficult to obtain money, both on account of its scarcity and because of the prohibitions by which Christians were bound in relation to usury. Their establishment and dissemination is one of the brightest glories of St. Francis of Assisi. At first the *montes* met with opposition, but this was gradually overcome, and Leo X and the Fifth Lateran Council declared them to be in no way illicit or sinful, but, on the contrary, meritorious, and whoever preached or wrote against them was

20 Linsenmann, *Lehrbuch d. Moraltheol.*, p. 578.

threatened with excommunication.[21] To-day the *montes pietatis* flourish especially in Italy, where, in 1896, there were 556 of them with combined resources of nearly 72,000,000 lire. Msgr. U. Benigni, to whom we are indebted for this information, discusses the advantages and disadvantages of this peculiar form of charity as follows: "It is held that they promote carelessness in contracting debts, that they destroy love for labor, incite to theft, are often the cause of financial ruin, and, lastly, that they are contrary to the principle of free competition. On the other hand, they are a necessity; for without them the needy would be exposed either to the extortion of private lenders or to ruin, into which they might be plunged by some misfortune from which a momentary loan might save them. Their disadvantages are undeniable, but disadvantages are common to all human contrivances. For the rest, the *montes pietatis,* besides the relief that they brought to the poor, exerted great influence upon the ideas concerning interest on loans; for the rigid views of the theologians of the Middle Ages in that connection underwent a first modification which prepared the way for a generalization of the principle that moderate interest might justly be charged, and also the mere existence of the *montes pietatis* compelled private speculators to reduce their rates of interest from the usurious rates that had hitherto prevailed." [22]

In this country we have no *montes pietatis,* and rapacious "loan sharks" ply their trade freely in spite of existing laws. Whether publicly controlled pawnbrokers

21 *Conc. Lat. V,* sect. 10 (Denzinger-Bannwart, n. 739).—Cfr. *Conc. Trident.,* Sess. XXII, c. 8, *De Ref.;* H. Holzapfel, O. F. M., *Die Anfänge der Montes Pietatis,* pp. 15 sqq., 32 sqq.

22 U. Benigni, article *"Montes Pietatis"* in the *Catholic Encyclopedia,* Vol. X, p. 534 sqq.; P. Cleary, *The Church and Usury,* pp. 106–113.

would be an advisable substitute for the private harpies now robbing the poor, is a question which does not belong to Moral Theology.[23]

READINGS.—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., pp. 902 sqq.—St. Alphonsus, *Theol. Mor.,* l. III, n. 911–916 (ed. Gaudé, II, 305 sqq.).—V. Cathrein, S. J., *Moralphilosophie,* Vol. pp. 167 sqq.—J. E. Pruner, *Lehre vom Recht,* Vol. I, pp. 424 sqq., 463 sqq.—J. Schwane, *Die theol. Lehre über die Verträge,* pp. 173 sqq.—D. Barry, "The Ethics of Insurance" in the *Irish Theol. Quarterly,* Vol. VIII (1913), No. 30.

23 Benigni, *ibid.,* p. 536.—Linsenmann, *Lehrbuch d. Moraltheol.,* p. 579.

SECTION 7

PARTNERSHIPS AND STOCK COMPANIES

1. A partnership (*societas sive contractus societatis*) is a relation based upon a contract by which two or more persons agree to carry on a business, trade, occupation or profession in common with a view to profit. The partners collectively are called a firm and carry on business under the firm name.[1]

a) For a partnership contract to be licit and valid, it is necessary, first of all, that the object or purpose for which it is entered into be lawful; second, that each partner should contribute his share to the capital invested; third, that, if actively engaged in the business, he should do his part in making it successful and, fourth, that he receive his part of the profits, or bear his share of the losses, according as the venture proves prosperous or the reverse.[2]

1 Slater, *A Manual of Moral Theology,* Vol. I, p. 548.

2 St. Thomas, *Summa Theol.,* 2a 2ae, qu. 78, art. 2, ad 5.—Cfr. P. J. Gury, S. J., *Comp. Theol. Mor.,* Vol. I, n. 860: *"Omnis societas fieri debet de re licita et honesta nec non ad commune bonum contrahentium. Singuli socii in societatem afferre debent pecuniam aut merces aut industriam vel operam. Ita ex omni iure. Contractus societatis est modus legitimus negotiationem faciendi. Constat ex legi-*

Any losses caused to the firm by negligence or fraud on the part of any one of the partners, must be borne by the latter.

An illegal contract made by one partner will not bind the others, for all parties are supposed to know and obey the law, and an illegal bargain cannot be enforced.

A partnership contract *expires* at the end of the period stipulated therein, or by the destruction of the object for which it was made, or by the mutual consent of the partners, or by a unilateral declaration of one or more of them, or by the attainment of the purpose for which it was established, or when it is ascertained that its objects are impossible, or, finally, by the natural or civil death of one of the partners. The cessation of a partnership does not, however, end its outstanding obligations, which, on the contrary, must be fully satisfied if possible.

The death of a partner causes a *dissolution* of the partnership. Nor can executors or administrators succeed to his place; if they do so, they assume an unpleasant personal responsibility. To

bus civilibus omnium nationum, ex usu universali omnium populorum, ex iure naturali; non enim minus licitum est pluribus coniunctim quam singulis ex suis rebus lucrum facere, modo debita aequalitas servetur. Conditiones requisitae sunt: 1. Ut sit aequalitas, id est, divisio lucri pro rata rei collocatae; 2. Ut ad certum tempus ineatur societas et ante non liceat suum repetere; 3. Ut periculum sortis spectet ad dominum, nisi aliter pactum initum fuerit; 4. Ut quisque subeat onus damnorum et expensarum, quae intuitu societatis adveniunt; 5. Ut quisque diligentiam eandem adhibeat in societate ac in negotiatione privata."

relieve them from this, some States have passed statutes permitting surviving partners to act together under the direction of the court having charge of the estate.[3]

b) A species of partnership which formed a bone of contention among moralists for a long time, is that known as *triple contract* (*contractus societatis triplex sive contractus trinus*). It is defined by St. Alphonsus as a contract by which a man entrusts his money to a partner upon condition that, no matter how the undertaking may result, he receive back the entire sum invested, together with a certain profit, which is less than may reasonably be expected. In other words, it is a contract to which are joined two other contracts, one insuring against risk and the other assuring a profit. The whole agreement is based on the desire to make a small but assured profit.[4] For instance, A enters into a partnership contract (*societas*) with B and contributes $1000 to the business on condition that he may demand his capital back at any time (*assecuratio sortis*). He agrees to be satisfied with six per cent. on his investment, even though the actual profits may be much larger (*emptio lucri*).[5] This form of contract was attacked by Soto and some other theologians because they regarded it as "veiled usury" (*usura*

3 Gury, *op. cit.*, I, n. 861.—Bolles, *Putnam's Handy Law Book*, pp. 198 sqq.

4 St. Alphonsus, *Theol. Mor.*, l. III, n. 908 (ed. Gaudé, II, 310 sqq.): *"Contractus trinus est contractus, quo quis pecuniam conferens paciscitur cum alio socio, ut quidquid eveniat, summa integra sibi restituatur cum lucro certo, minore tamen lucro quod sperare probabiliter poterat; vel est contractus societatis, cui adiunguntur duo alii contractus, nempe assecurationis sortis et assecurationis lucri seu venditionis spei lucri maioris pro minore lucro certo et assecurato."*

5 J. E. Pruner, *Kath. Moraltheologie*, Vol. II, 3rd ed., p. 146; Idem, *Lehre vom Recht*, Vol. I, p. 462.

palliata). Since the mitigation of the Church's attitude on interest-taking the *contractus trinus* can no longer be condemned, provided, of course, due proportion is observed between investment and profit.[6]

The *contractus trinus* differs from ordinary loan contracts only in this that it refers to a certain definite business and that the profit is attributable largely to the money invested.[7]

2. There are various kinds of societies or associations based upon partnership contracts, more or less clearly differentiated by their objects and their mode of organization.

a) A partnership consisting of a number of persons associated for mutual gain (*societas quaestuaria*), without a specific agreement as to the manner in which the expected profits are to be made, may be of two kinds: (α) one in which all the partners have an equal investment and a claim to an equal share in the profits, or (β) one in which the shares invested, and consequently the division of the profits, are unequal.

b) Partnerships or associations in which all the members contribute capital only, or in which some of the members contribute their labor in lieu of capital. The former may be either limited or unlimited, public or anonymous, according

6 It is thus that we must interpret the prohibition contained in the *"Detestabilis avaritiae"* of Sixtus V (1586); cfr. Göpfert, *Moraltheol.*, Vol. II, 7th ed., p. 179; P. Cleary, *The Church and Usury*, pp. 129 sqq.

7 Göpfert, *ibid.* Cfr. A. Lehmkuhl, S. J., *Theol. Mor.*, Vol. I, p. 749.

as each partner is liable for the debts of the association with the whole of his fortune or not. The latter are commonly known as

c) *Stock companies or corporations* (*associationes anonymae*) because in them the capital invested is represented by shares (stocks), held by different persons, each of whom is liable for the debts of the corporation only in proportion to the amount of his shares. Under the natural law a company of this kind can only be formed with an express declaration that the liability of its share-holders is limited, in order that all those who enter into business relations with it may be aware of the risk involved.

a) Stock companies have their advantages as well as their disadvantages and dangers. The detachment of capital from personal responsibility is morally dangerous and may be permitted only in consideration of the fact that unlimited liability might easily involve serious disadvantages to many. Then there is the danger that the capital invested in a stock company, in view of the very slight influence exercised upon the management by the individual share-holders, will be improperly administered and that the company's real aim is often obscured by a selfish desire for profits. Stock companies, furthermore, easily lend themselves to fraudulent practices, in which inexperienced or credulous investors may be robbed of their money. We need only remind our readers of the vast sums lost in this country of late years through stock companies organized to exploit real or fictitious oil wells. Stock companies are also used by capitalistic manipulators

on the grain and stock exchanges. Finally, they are apt to be employed by large manufacturers and merchants as means to ruin smaller competitors and thus further the proletarization of large numbers of hitherto independent business men.[8]

Stock companies, says a recent writer, enable all who have a little money to take part in risky and fraudulent business ventures; they make it easy for dishonest speculators to exploit the credulity of the public; with their numerous, easily transferable and fluctuating shares they furnish a convenient and welcome means of betting, and have thereby prepared the way for excessive stock gambling. These disadvantages began to appear as early as the seventeenth century, that is, at the very start of the new development, and since then the history of stock gambling is intimately bound up with the history of stock companies.[9]

It should be noted, however, that the dividends paid by all the stock companies of a particular country during a definite period are not nearly as high as Socialist writers allege.[10]

β) Against these disadvantages stock companies have some advantages, which should not be overlooked. Thus they have played an indispensable rôle in the development of railroads, canals, tunnels, mines, and other important means of modern economic development. Hence it may safely be said that if the disadvantages and dan-

8 V. Cathrein, S. J., *Moralphilosophie*, Vol. II, 4th ed., pp. 372 sq.; Göpfert, *Moraltheol.*, Vol. II, 7th ed., pp. 180 sq.

9 *Handwörterbuch der Staatswissenschaften*, 2nd ed., Jena 1901, Vol. I, pp. 181 sqq.

10 *Ibid.*, pp. 198 sq., 210 sqq.

gers that spring from their very nature are minimized by rational limitations and supervision on the part of the public authorities, stock companies may be useful factors in our economic life. Fr. Cathrein thinks that they are indispensable until men will discover a new form of association which offers all the advantages of limited liability without its disadvantages.[11]

d) A *corporation* is a moral entity, a fictitious person with rights of its own, distinct from the rights of the physical persons who compose it. More specifically, in modern commercial life it is "an artificial person created by law, consisting of one or more natural persons united in one body under such grants as secure a succession of members without changing the identity of the body and empowered to transact business of some designated form or nature like a natural person." The State, of course, has the right to exercise control over such societies, and they are subject to all just laws which it may make in their regard.[12]

The statutes regulating corporations are so numerous and complicated that a whole class of lawyers devotes itself entirely to their study and application. These attorneys, known as "corporation lawyers," are often hired chiefly for the purpose of aiding their clients in evading the law.[13]

One of the worst features connected with stock com-

11 *Moralphilosophie,* Vol. II, 5th ed., p. 384.

12 Slater, *A Manual of Moral Theol.,* Vol. I, p. 352.

13 For a useful summary of the statutes regarding corporations in this country see *Putnam's Handy Law Book for the Layman,* pp. 71–101.

panies and corporations is the practice of *stock-watering*. By this term is meant *overcapitalization* in excess of the proper valuation of a business. It is mostly practiced by businesses that are not subject to normal competition. What is the measure of overcapitalization? According to Dr. Ryan, when the face value of its securities is greater than the money put into the business plus the subsequent enhancement in the value of its land. In brief, the proper measure of capitalization is cost—either the original cost, or the present cost of reproducing the business.

"Stock-watering can become an instrument of unjust gains in two ways: first, through fraud inflicted upon some of the investors; second, through the imposition of exorbitant prices upon the consumers. . . . If stock is sold in excess of the earning power of the concern, those stockholders who fail to obtain the ordinary rate of interest on their money are unjustly treated in so far as they have been deceived. And those officers or members of the corporation who have profited by the deception of and injury to these stockholders, are the recipients of unjust gains."[14] The consumer also is often injured by stock-watering. "The presence of a large quantity of fictitious capital whose owners are calling for dividends, sometimes constitutes a special force impelling the imposition of higher prices and charges. . . . The U. S. Industrial Commission found that, as regards railroads, 'in the long run excessive capitalization tends to keep rates high; conservative capitalization tends to make rates low.' . . . When prices or charges are made high enough to provide returns on fictitious capital, the consumer is treated injustly. . . . The consumers may justly be required to pay for the use and benefit of actual pro-

[14] J. A. Ryan, *Distributive Justice*, p. 281.

ductive goods; but it is not just that they should be compelled to pay for the supposed use of a capital that has no concrete reality. The stockholders of the monopolistic corporation which imposes upon the consumers exorbitant prices or charges through the instrumentality of inflated capitalization, can become guilty of this injustice in two ways: by promoting the improper capitalization, and by getting dividends on stock for which they have not given a fair equivalent. As a rule the greater part of such guilt and responsibility rests upon certain special and powerful groups among the stockholders." [15]

Nevertheless, Dr. Ryan, whom we have quoted, does not think that the State is obliged to protect, or even justified in protecting, the innocent victims of stock-watering: first, because it is impossible to distinguish the "innocent" holders from those who were fully acquainted with the questionable and speculative nature of the stock at the time it came into their possession; second, because the civil law has never formally recognized any such claim on the part of the innocent investors nor any such obligation on the part of itself; third, because the innocent investors are not the only persons whose rights are involved; the main injury falls upon the consumers." But the State may and should intervene to secure fair charges for the consumers, basing them upon the capital actually invested in public utility corporations (for it is they that are mostly concerned) and used in the business of public service.[16]

In some States, *e. g.,* Massachusetts, there are *anti-stock-watering laws,* which bind at least public service corporations, and there is a legal limit to the amount payable in dividends, usually eight per cent. Assuming

15 *Distributive Justice,* pp. 282 sqq.

16 *Ibid.,* pp. 286 sqq.

that such laws are just, Fr. Slater says: "It may be that a larger percentage than is allowed by law to be paid in dividends would be the fruit of extortion and unjust dealing on the part of the corporation, and if this be so, the shareholders will have no right to the excess which is the fruit of injustice. Such excess is due to those who were wronged and from whom it was extorted, and it must be restored to them. Moreover, if the limit in the amount of the dividends allowed by law was accepted by the corporation and formed part of the conditions of incorporation, it must of course be adhered to like all other contracts lawfully entered into. If, however, the above expedients [such as paying the stockholders so-called stock dividends consisting of an outright bonus or new shares of stock; retirement of bonds in favor of stocks, etc.][17] are not productive of injustice or hardship to the public or to individuals, whether belonging to the corporation or not, but are merely illegal, the question for the moralist will be: What is the obligatory force of the laws which prohibit them? This will chiefly depend upon the intention of the legislator, and as modern legislators as a rule have no intention of making their rules for the individual conscience, we shall be safe in saying that they do not bind under pain of sin."[18]

READINGS.—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., pp. 863 sqq.—St. Alphonsus, *Theol. Mor.,* l. III, n. 904–910 (ed. Gaudé, II, 305 sqq.).—V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 383 sqq.—Theo. Meyer, *Instit. Iuris Naturalis,* Vol. II, pp. 234–239.—J. Schwane, *Die theol. Lehre über die Verträge,* pp. 167 sqq.—J. E. Pruner, *Lehre vom Recht,* Vol. I, pp. 455 sqq.—H. Noldin, S. J., *Summa Theol. Mor.,* Vol. II, pp. 627.—

17 On such expedients see W. Z. Ripley, *Trusts, Pools, and Corporations,* N. Y. 1905, pp. 139 sqq.

18 T. Slater, S. J., *Questions of Moral Theology,* N. Y. 1915, pp. 170 sqq.

J. A. Ryan, *Distributive Justice,* N. Y. 1916, pp. 279–290.—T. Slater, S. J., *Questions of Moral Theology,* N. Y. 1915, Chapter X: "The Moral Aspects of Commercial Stock-watering," pp. 159–175.

SECTION 8

GAMING AND WAGERING CONTRACTS

Gaming and wagering contracts (*contractus aleatorii*) are those in which the profit or loss agreed upon depends upon some future and uncertain event. Their peculiar feature is that one or both parties assume a risk which originates through the contract itself at a mutually agreed price. This note distinguishes gaming and wagering contracts from insurance contracts, in which the risk for one of the contracting parties exists before the agreement is made.

Generally speaking, gaming and wagering contracts are not forbidden by the moral law, provided hope of gain and risk of loss are equal, or approximately equal, on both sides, and no other law of justice or good conduct is violated. They are illicit if too large a sum is exposed to accident, or if the agreement made cannot be kept without in some way violating Christian self-love [1] or the charity due to others.

The most important species of gaming and wagering contracts are the following:

[1] See this *Handbook*, Vol. III, pp. 4 sqq.

1. *Wagering* or *betting, i. e.,* a contract by which a prize is agreed upon for the one who correctly guesses an unascertained event, past or future. To make a bet is not sinful, provided it has a rational purpose, the matter is not sinful or an incentive to sin, both contracting parties are uncertain as to the disputed point, the object of the bet is understood by both in the same way, and the sum at stake is moderate.[2] If one of the parties is certain as to the disputed matter, and neglects to notify the other of the fact, he is bound in conscience to make restitution of the sum won, for the reason that the contract itself was invalid and unjust.[3] But if he informed the other party that he was sure of the truth, and the other nevertheless insisted on betting, the winner would be permitted to pocket

2 Busembaum, *Medulla Theol. Mor.*, l. III, tr. 5, c. 3, dub. 13: "*Sponsio est contractus, in quo duo veritate aut eventu alicuius rei certantes sibi invicem aliquid spondent, ut id eius sit, qui veritatem assecutus fuerit, v. g. certo tecum decem imperialibus, hanc vel istam civitatem obsessam, captam etc. Ut licite fiat, requiritur:* 1. *Ut fiat super re dubia;* 2. *Ut sit aequalitas in re, quae spondetur cum aequali incertitudine;* 3. *Dubius eventus in utroque;* 4. *Ut uterque eodem sensu accipiat id, de quo certatur.*" (Tournai, 1876; Vol. I, 262).

3 Antoine, *Theol. Mor. Univ.*, tr. *De Contract.*, P. II, c. 11, qu. 6: "*Si quis certus de rei veritate vel eventu aliquid sponsione lucratus est, tenetur id restituere, etiamsi de sua certitudine alterum monuisset, qui nihilominus vellet contendere. Quia hic non vult donare aut se punire, sed spondere, eo quod putet rem esse semper incertam et falli ab alio, et ideo diligenter postea veritatem inquirit. Quum autem in sponsione ematur et vendatur spes lucri periculo amittendi veluti merx pretio, si nullum sit periculum perdendi, nihil emitur nec venditur, ac proinde invalidus est contractus, sicuti invalida est emptio gemmae falsae pro vera, etiamsi emens monitus fuisset falsum esse, sed credere noluisset.*" (Douai, 1751; III, 617). Cfr. Sporer-Bierbaum, *Theol. Moral.*, Vol. II, 2nd ed., n. 829

the gain, because in that case the loser would have only himself to blame.[4]

St. Alphonsus refuses to acknowledge the permissibility of betting on the ground that the motives which alone can render it lawful, namely, recreation and entertainment, are in most cases absent, and holds that most betters are guilty of venial sin. But, as Schwane points out, there are other reasonable purposes that can be attained by betting, *e. g.,* ending an argument or quieting disputatious persons and teaching them a lesson.[5]

Nevertheless it remains true, in most cases, as Slater says, that though a wager that fulfils the conditions laid down by moralists is not in itself a sinful transaction, yet "a habit of gambling is easily contracted; and when such a habit has once been formed, it is very difficult to shake it off. There may be a certain amount of temporary success; the excitement and fascination which gambling has for many minds; the ease and rapidity with which large sums of money may sometimes be acquired by this

4 Lehmkuhl, *Theol. Mor.,* Vol. I, 11th ed., n. 1370: *"Si unus sponsionem certus est de re, sponsionem cum altero inire nequit: immo communiter non sufficit quidem, ut dicat se certum esse. At si aperte dicit, se plane certum esse, et nihilominus alter in sponsione perseverat, S. Alphonsus* (*Theol. Mor.,* l. IV, n. 879) *admittit, licere sponsionem inire in sequentibus casibus: 1. Si qui putavit se certum esse, alterius pertinaci contradictione incipit dubitare; 2. Si certitudine ipsius non obstante alter, quamquam dubitat de sua assertione, nihilominus vult in sponsione persistere. Cui adiungi potest: 3. Si utcunque constet de spontaneo animo donandi."*

5 St. Alphonsus, *Theol. Mor.,* l. III, n. 868: *"Sponsio per se est res indifferens. Tamen in individuo (cum ex mea sententia non detur actio indifferens) regulariter censeo huiusmodi sponsiones non excusari a peccato veniali, quia in eis deest motivum cohonestans licitae recreationis, sicut adest in ludo honesto. Et sic videtur intellegere S. Antoninus* (*S. Th.,* P. II, tit. 1, c. 23, § 9) *vocans tale lucrum turpe, utpote nulli deserviens utilitati, sed vanitati et prodigalitati."*—Cfr. P. Scavini, *Theol. Mor.,* tr. 6, disp. 2, diss. 2, c. 2, a. 9.—J. Schwane, *Die theol. Lehre über die Verträge,* p. 188.

means,—all lend their attraction, and combine to make what in itself, if indulged in occasionally, may be a legitimate form of recreation, a most dangerous temptation and the sure road to ruin." [6]

Moreover, betting is almost always associated with abuses. *"Race-track gambling, book-making, bucket shops,* are all merely cleverly disguised devices for separating the fool from his money. If it were only the fool who suffered, it would be serious enough, though perhaps salutary for the fool. But the evil radiates in all directions. This is so clearly realized that all *betting on horse races* is in many places forbidden by law. Elsewhere the State contents itself with declaring such contracts invalid and refusing to allow the courts to be used for the collection of any betting or gambling debts. . . . No nation avoids all gambling, but those nations are strongest and worthiest whose citizens come closest to the ideal of refraining altogether from such practices." [7]

Wagering contracts generally are not enforceable in English courts of law; in the United States some courts have enforced certain wagers which were not considered to be opposed to morality or sound policy, whilst other courts have held that no wagers are recoverable.

2. A *gaming contract* is one in which the participants agree to give to the winner in a game, sport, or other pastime a sum of money or anything of value as a stake. It differs from a bet in that it is success which wins and not the truth.

a) As games themselves, be they of skill or

6 Th. Slater, *A Manual of Moral Theol.*, Vol. I, p. 558.

7 J. E. Ross, *Christian Ethics*, p. 355.

of pure chance, are allowed within certain reasonable limits, for exercise or recreation, so, too, there is nothing *per se* immoral in gaming contracts by which money or some other valuable is staked on the result of a game, to be lost or won according to the success or failure of the participant. "These contracts are permitted by the moral law of nature," says Busembaum, "provided proper conditions are observed, and no scandal is given, and provided, moreover, that there is no just prohibition, no wrong-doing, and no occasion of sin. The reason is that, as every man who is master of his property, can give it away absolutely, so also may he give it away under some condition, whether that condition depend on chance or industry." [8]

"There is nothing immoral," says Slater, "in agreeing to hand over a sum of money if I am beaten in a game either of skill or of chance. This perfectly lawful action will, however, become unlawful if one of the parties is compelled to play against his will, or if cheating and fraud are practiced in the game, or if there is no chance of success on the part of one of the players (unless he knows this and freely consents to play in spite of it), or

8 Busembaum, *Medulla Theol. Mor.*, l. III, tr. 5, c. 3, dub. 13: *"Ludus est contractus, quo ludentes inter se paciscuntur, ut victori cedat quod uterque deposuit. Hi contractus iure naturae liciti sunt, modo debitae conditiones adsint et aliunde non intervenit scandalum aut iusta prohibitio aut iniquitas se misceat nec peccati sit occasio; quia sicut quivis suae rei dominus potest alteri eam donare absolute, sic etiam sub aliqua conditione, sive ea fortuita sit, sive ex industria pendeat."*

if the parties have not the money which they stake, or at any rate not the free disposal of it on account of its being required to pay their debts, or to support themselves and their families. Moreover, although gaming itself and under the conditions which have just been laid down, is not immoral, yet it is a dangerous pastime for many and easily leads to abuse, sin, and ruin. Especially is this the case when gambling is carried on in houses kept for the purpose, where all kinds of bad characters congregate. The keeping of such dens of iniquity is rightly punished by law." [9]

In the United States gambling is considered unlawful and the contract null, yet the statutes of the different States vary considerably in matters of detail.[10]

The owners of *gambling houses,* in which so many take scandal and others lose their all and are driven to desperation and often suicide, have a grievous responsibility indeed.

The civil authorities may, for weighty reasons, tolerate *public gambling houses* in order to prevent secret gambling and thus minimize the evil as much as possible.[11]

b) To indulge in gaming solely for pecuniary gain may easily become sinful, but, as De Lugo and Molina justly maintain, it is not sinful *per se,* for to strive after pecuniary gain for oneself or family is not in itself wrong, so long as it is not carried beyond certain reasonable limits. Playing at games of pure chance depends

9 Slater, *A Manual of Moral Theol.,* Vol. I, p. 559.—Cfr. Gury, *Comp. Theol. Mor.,* Vol. I, n. 885–887; n. 890–891.

10 M. Martin, S. J., in his American Notes to Slater's *Manual of Moral Theol.,* Vol. I, p. 559.

11 Lehmkuhl, *Theol. Mor.,* Vol. I, 11th ed., n. 1373; Göpfert, *Moraltheol.,* Vol. II, 6th ed., p. 203.

for its permissibility also on the players' station in life and other circumstances. Women cannot decently indulge in such pastimes, and clerics are forbidden to do so if it involves scandal to others or loss of valuable time.[12]

c) To pay one's gaming debts is a duty of justice if the contract was valid and licit. Hence he who wins in a legitimate game, even of pure chance, has a moral claim to the prize offered as stake. An unjust gaming contract, on the other hand, creates no obligation because it is invalid. A conscious violation of justice, *e. g.*, lying or cheating, destroys one's right to the prize and, if unjustly accepted, entails the duty of making restitution. If the game itself was not unjust, but merely illicit, because forbidden by law, the winner is not obliged to restore to the loser the prize he has received, unless a court of law condemns him to do so. Similarly the loser is not obliged to pay out a prize won in an illicit game, if the statutes enact, as they do in some States of the Union, that a person losing money or property at any game may recover the same by civic action.[13] Every one is free to avail himself of a law that is enacted for the public welfare and designed to prevent illicit gambling.[14]

12 Slater, *A Manual of Moral Theol.*, Vol. I, 558; cfr. Schwane, *Die theol. Lehre über die Verträge*, pp. 185 sq.; *Conc. Trid.*, Sess. XXII, c. 1, *De Ref.*; *Instructio Pastor. Eystettensis*, 5th ed., pp. 544 sq.

13 Slater, *A Manual of Moral Theol.*, Vol. I, p. 559.

14 St. Alphonsus, *Theol. Mor.*, l.

If the game itself and the underlying contract were licit, that is, not forbidden by positive law, and if the prize was duly proportioned to the means of the contracting parties, then the loser's duty of paying the sum at issue is usually, according to the intention of the parties, a legal duty *in foro conscientiae;* if no such intention existed, there is at any rate a duty of fidelity, which must be complied with even where the civil law does not grant the right of suing for recovery. A duty based merely on fidelity, may, however, lose its binding force under certain conditions,—a fact which must be taken into consideration in dealing with such cases *in foro conscientiae.*[15]

3. A *lottery* (*loteria sive sortitio*) is a scheme under which prizes are distributed by lot or chance. A valuable consideration is given for the chance of drawing a prize of greater value. The prizes are relatively few, and most of the players lose by the transaction. *Per se* a lottery is not unjust or contrary to the natural law, provided fraud is excluded from the casting or drawing of lots by which the event is settled, and provided further that there is a certain reasonable proportion between the sum paid for a chance and the hope of winning the prize.[16] Some theo-

III, n. 887 (ed. Gaudé, II, 297).—The loser, who has paid the prize, may not apply the *compensatio occulta.—Ibid.*, n. 893; cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 889.

15 Schwane, *Die theologische Lehre über die Verträge*, p. 187.

16 Gury, *Comp. Theol. Mor.*, Vol. I, n. 884: *"Loteria est contractus, quo plures aliquid deponunt in commune, ut ius habeant sortiendi rem in medio exhibitam. . . . Loteria est contractus licitus, dummodo adsint requisitae conditiones. Ratio est, quia loteria spectari potest ut emptio rei incertae seu ut contractus, quo pecunia emitur ius sortiendi et acquirendi id, quod per*

logians hold that the profit made by the conductors of a lottery must not be larger than that yielded by any legitimate business undertaking, unless the lottery is operated for charity or for the public benefit.[17] But this view is not shared by all.

Playing the lottery is a fascinating occupation and tends to promote love of gambling with all its injurious consequences. Hence Father Cathrein says: "Though lotteries are not illicit *per se,* that is, so long as no fraud is perpetrated in selling the tickets and drawing the lots, they readily lend themselves to abuse, and only too often a simple and greedy public is led to buy chances beyond its means. Therefore lotteries should be limited as much as possible, especially if they serve no other purpose than private profit." [18]

But even if held for legitimate and charitable purposes, lotteries are of doubtful propriety. Many may participate therein without indulging in the gambling passion and without harboring hopes of easy profit, intending the money they pay for chances merely as an alms; but by

sortem acciderit. Porro licet emere rem incertam, sicut pro rei alicuius periculo pacisci. . . ."

17 *Ibid.: "Conditiones requisitae, ut loteria fiat contractus in se licitus, sunt: 1. Ut nulla sit fraus in schedulis educendis nec in solvendo praemio, quod obtigit; 2. Ut dominus loteriae in lucro non excedat nec plus moraliter lucretur, quam si alio contractu licito pecuniam suam impenderet vel merces suas distribueret. Attamen maius potest esse lucrum, si in bonum opus vel utilitatem publicam instituta sit loteria.*"—Cfr. Lehmkuhl, I, n. 1369; J. E. Ross, *Christian Ethics,* p. 357.

18 V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., p. 386.

promoting the lottery they render themselves co-responsible for the seduction of foolish and covetous persons and abet superstition.[19]

Though governments have at times resorted to this scheme for raising money, lotteries are now pretty generally condemned as a form of gambling and are prohibited by law in Great Britain and the United States.[20]

We Americans sometimes pride ourselves on the fact that we have abolished lotteries, regulated horse racing, and reduced various other forms of gambling to reasonable bounds; but as Fr. Ross justly observes,[21] "this pride is hardly justified while at the same time the most important form of gambling—speculation on the exchanges—flourishes so luxuriantly and with so few regulations," and, we may add, while our national game of *baseball* is made the means of wide-spread gambling all over the country.

READINGS.—St. Thomas, *Summa Theol.*, 2a, 2ae, qu. 168, art. 2–4 (J. Rickaby, *Aquinas Ethicus*, II, pp. 376 sqq.).—De Lugo, *De Iust. et Iure*, disp. 31.—Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., pp. 868 sqq.—St. Alphonsus, *Theol. Mor.*, l. III, n. 869

19 F. X. Linsenmann, *Lehrbuch der Moraltheologie*, p. 587.

20 Slater, *A Manual of Moral Theol.*, Vol. I, pp. 558.—In the U. S. the lottery has been from the earliest settlement of the country a familiar means of raising funds which could not have been secured so easily, if at all. In the eighteenth century they were extraordinarily popular. Legislatures authorized lotteries for every species of public improvement, for the building of churches and colleges, for the repair of losses to individuals by fire and otherwise. Faneuil Hall (Boston), for instance, was rebuilt by lottery after the fire of 1761. The Continental Congress tried to raise money by lottery in 1777. The movement for the suppression of lotteries dates from 1833. The last lottery supported by government encouragement was the Louisiana State Lottery, which was crushed by an act of Congress in 1890, forbidding it the use of the mails. The company removed to Honduras, where it is still in existence, and from where it sells thousands of tickets every month in the United States. (Cfr. *Cyclopedia Americana*, Vol. IX, *s. v.* "Lottery").

21 Ross, *Christian Ethics*, p. 357.

sqq. (ed. Gaudé, II, 286 sqq.).—J. E. Pruner, *Lehre vom Recht,* Vol. I, pp. 475 sqq.—J. Schwane, *Die theol. Lehre über die Verträge,* pp. 184 sqq.—Göpfert, *Moraltheologie,* Vol. II, 7th ed., pp. 202 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 583 sqq.—T. Slater, *A Manual of Moral Theology,* Vol. I, pp. 557–561.—Idem, article on "Gambling" in the *Catholic Encyclopedia,* Vol. VI, pp. 375 sq.—J. E. Ross, C. S. P., *Christian Ethics,* pp. 352 sqq.

SECTION 9

SINS AGAINST THE PROPERTY OF OTHERS

I. Since the right of ownership is founded on the natural law and sanctioned by positive divine and human law, it follows that every man is in duty bound to respect the property of his fellow-men and to abstain from unjust interference with property rights. This is a duty of commutative justice (*iustitia commutativa*), and is violated by all deeds of injustice (*iniustitia sive iniuria*), *i. e.*, by every voluntary violation of the property rights of another against his reasonable will (*iuris alieni violatio*). He who renounces a right of his own free will, loses it, and he who appropriates it, cannot be accused of injustice. But if one is compelled by violence, force, stratagem, or fear to give up a right, especially an inalienable right, he does not lose it, but suffers violence.[1]

1 *Reg. Iuris in VI° Decr. Bonif. VIII*, n. 27: *"Scienti et consentienti non fit iniuria neque dolus."*— Gury, *Comp. Theol. Mor.*, I, n. 589: *"Scienti et volenti non fit iniuria, quia volens cedit e iure suo et proinde ius non servat; hinc de essentia iniuriae est, ut erga nolentem exerceatur. Excipe casus nonnullos, in quibus homo ius suum cedere nequit, quantumvis volens; sic coniugatus nequit consensu suo impedire, quin violatio uxoris suae sit adulterium stricte dictum. Vide*

Injustice is either formal or material, according as it is inflicted with or without knowledge and free will. It is direct if fully intended; indirect, if merely an unintentional consequence of some other action. It is grave or slight, according as it results in a grave or slight injury.

The gravity of a sin committed against the property rights of another is measured not only by the damage inflicted,[2] but likewise, and mainly, by the malice involved, the injury inflicted, and the danger arising from the deed to society.[3]

prop. damn. sub Innoc. XI, n. 50: *'Copula cum coniugata consentiente marito non est adulterium ideoque sufficit in confessione dicere, se esse fornicatum.'"*—(Denzinger-Bannwart, n. 1200).—*Ibid.*, n. 590: "1. *Consentienti ex vi, dolo vel metu iniuste incusso fit iniuria, quia consensum non praestat libere, sed tantum ad se redimendum ab iniusta vexatione; 2. Qui occidit volentem facit iniuriam non solum Deo, sed ipsi occiso, quia ius ad vitam non est abdicabile, nisi Deus, qui illud statuit, prius consenserit; 3. Qui percutit clericum, ipsi licet consentienti iniuriam facit, quia non potest renuntiare privilegio canonis quod ad statum clericalem spectat; 4. Usurarius iniuriam facit mutuatario solventi usuras, sicut venditor emptori pretium nimium pro merce concedenti; 5. Tortores martyribus iniuriam fecerunt, etsi martyres mortem desideraverint et libenter pertulerint."*

2 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 73, art. 3: "*Peccata, quae committuntur in proximum, sunt pensanda per se quidem secundum nocumenta, quae proximo inferuntur, quia ex hoc habent rationem culpae. Tanto autem est maius nocumentum, quanto maius bonum demittitur.*"—*Ibid.*, p. 74, art. 2: "*Peccatum in proximum tanto est gravius, quanto per ipsum maius nocumentum proximo infertur. Nocumentum autem tanto maius est, quanto maius bonum quod tollitur.*"

3 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 59, art. 4: "*Peccatum mortale est quod contrariatur caritati, per quam est animae vita. Omne autem nocumentum alteri illatum ex se caritati repugnat, quae movet ad volendum bonum alterius. Et ideo cum iniustitia semper consistat in nocumento alterius, manifestum est, quod facere iniustum ex genere suo est peccatum mortale.*"—*Ibid.*, qu. 66, art. 6: "*Peccatum mortale est quod contrariatur caritati, secundum quod est spiritualis animae vita. Caritas autem consistit principaliter quidem in dilectione Dei, secundario vero in dilectione proximi, ad quam pertinet, ut proximo*

Slightness of matter (*parvitas materiae*) may, of course, render a sin against the property rights of another merely venial, but in itself (*in genere suo*) this sin is mortal.[4] For injustice in its innumerable forms is, as a rule, not only inspired by immoral motives and uncontrolled passions, but it grossly violates the justice and charity which every man owes to his neighbors, and is the source of many other sins, *e. g.*, lies, treason, and perjury.

It is of the greatest importance that every property right be kept sacred. On the other hand, the danger of violating justice is very great, partly because of the sophistry of selfishness and partly because of the difficulty

bonum velimus et operemur. Per furtum autem homo infert nocumentum proximo in suis rebus, et si passim homines sibi invicem furarentur, periret humana societas. Unde furtum tanquam contrarium caritati est peccatum mortale."—Cfr. J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 589: "*Quaenam materia gravis censeatur in iniuria? Ea est, quae ex natura sua vel communi aestimatione apta est alteri causare contristationem difficile sedabilem seu caritatem mutuam dissolvere.*"

4 Is. V, 8–10; XXXIII, 1; Amos VIII, 2–10; Mich. VI, 10–15; Hab. II, 6–14; Zach. V, 3; I Cor. VI, 10 sq.; I Thess. IV, 6.—Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 118, art. 4: "*Avaritia secundum quod opponitur iustitiae, ex genere suo est peccatum mortale; sic enim ad avaritiam pertinet, quod aliquis iniuste accipiat vel retineat res alienas, quod pertinet ad rapinam vel furtum, quae sunt peccata mortalia. Contingit tamen in hoc genere avaritiae aliquid esse peccatum veniale propter imperfectionem actus.*"—*Ibid.*, qu. 66, art. 6, ad 3: "*Illud quod modicum est, ratio apprehendit quasi nihil. Et ideo in his quae minima sunt, homo non reputat sibi nocumentum inferri; et ille qui accipit, potest praesumere, hoc non esse contra voluntatem eius, cuius est res. Et pro tanto si quis furtive huiusmodi res minimas accipiat, potest excusari a peccato mortali. Si tamen habet animum furandi et inferendi nocumentum proximo, etiam in talibus minimis potest esse peccatum mortale, sicut et in solo cogitatu per consensum.*"—Cfr. J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 589: "*Iniuria per se graviter iuri naturali adversatur, quia laedit independentiam naturalem et absolutam hominis, cuius violatur ius strictum.*"

of perceiving the limits that in many concrete cases separate justice from injustice, and hence it is one of the principal duties of priests to awaken and nourish in the souls confided to their care a delicate appreciation of right and justice, based upon the fear of God.[5] "To inspire a detestation of [theft and robbery]," says the Catechism of the Council of Trent, "and to deter the faithful from this wicked enormity, parish priests shall bestow all care and diligence." [6]

II. The principal way in which the property rights of others may be violated, besides sinful coveting of their possessions, is damaging them unlawfully (*damnificatio*) by theft or robbery.[7]

1. When property is destroyed or injured, not appropriated, that act is called *damnificatio iniusta sive dolosa.* It is qualified as *"non lucrosa,"* because the wrong-doer gets no benefit from his act.[8]

a) To this category of sins belong all real injuries done intentionally or through criminal negligence to the property of others against their reasonable will (*invito domino*); hence

5 J. E. Pruner, *Kath. Moraltheol.*, Vol. II, 3rd ed., p. 179.

6 *Catech. Rom.*, P. III, c. 8, qu. 8: *"Ad ea [furtum et rapinam] detestanda et ad fidelem populum a scelesto facinore deterrendum conferent omnem curam ac diligentiam parochi."*

7 Ex. XX, 15, 17; Deut. XXV, 13 sqq.; Prov. XX, 23; Matth. XV, 19; XIX, 18.—Cfr. *Catech. Rom.*, P. III, c. 8, qu. 3–6.

8 Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., tr. 5, n. 791: *"Damnificatio iniusta seu damnum iniuste datum dicitur occulta seu violenta destructio seu deterioratio rei alienae invito domino. Unde dicitur damnificatio non lucrosa, quod scilicet ex ea nullum lucrum vel commodum ad damnificantem perveniat."*—Cronin, *The Science of Ethics*, Vol. II, p. 380.

α) All injuries done to the movable or immovable goods (*bona fortunae*) of others, *e.g.*, houses, tools, crops, etc., and

β) All damage inflicted on public institutions or utilities, such as streets, sidewalks, railways, bridges, water works, etc.

b) The sinfulness of the acts just enumerated is determined by the extent of the damage done (*damnum emergens*), by the foreseeable consequences (*lucrum cessans*), by the malice inspiring the perpetrator, by the personal relationship existing between the parties concerned, and by the degree of carelessness shown.

The intentional damaging or destruction of religious statues or paintings on buildings or along public highways is not only a crime against justice, but a sin against religion, and if the articles are blessed or belong to the Church, it is also a sacrilege.[9]

If the owner of a building sets it on fire or causes some one else to do so (*crimen incendiarii*), in order to obtain the insurance, he not only inflicts damage, but also commits the sin of fraud.

Simple *damnificatio,* in contradistinction to the unjust appropriation of the property of others, generally consists in an uncharitable act of destruction bringing no advantage to the destroyer. In such cases the moral evaluation of the sin offers no difficulties. There is a more complicated case, however, which arises out of the intricacies of modern business. Not infrequently a mer-

9 See this *Handbook,* Vol. IV, pp. 231 sqq.

chant seeks and obtains advantages for himself at the expense of his competitor, and nothing is more common than the charge of *unfair competition* raised by the loser against the winner in the mad race for profits. By the introduction of spinning machinery thousands of weavers lost their jobs and suffered serious damage, yet the inventor of the spinning jenny and those who bought and used his patents were entirely within their rights when they employed this product of human ingenuity for their own enrichment. Every new improvement in machinery might be called an injury to him who is compelled to use the unimproved model, but it is no unjust *damnificatio* in the moral sense.

Injury done to another without a bad intention, and without culpable negligence, must be regarded as accidental; it is for the positive law to determine whether and to what extent one who unintentionally inflicts an injury on another is to be held liable for the damage done.[10]

2. The *unjust appropriation of the property* of another (*acceptio iniusta*), in which may be included the retention of ill-gotten goods (*retentio iniusta*), may take place secretly and furtively (theft), or openly and violently (robbery), or deceitfully (fraud), by charging an excessive rate of interest on loans (usury), by the careless incurring of debts, by fraudulent bankruptcy, and by refusing to pay wages, interest, or rent due to others.

10 Linsenmann, *Lehrb. d. Moraltheol.*, p. 596; Cronin, *The Science of Ethics*, II, p. 381.

A) *Theft* is the secret taking away of the property of another against his reasonable will. It may be simple or qualified. Species of qualified theft are *sacrilege* and the *embezzlement* of public funds (*peculatus*).

"Three things," says St. Thomas, "combine together to constitute theft. The first belongs to theft as being contrary to justice, which gives to each one that which is his, so that it belongs to theft to take possession of what is another's. The second thing belongs to theft as distinct from those sins which are committed against the person, such as murder and adultery, and in this respect it belongs to theft to be about a thing possessed: for if a man takes what is another's, not as a possession but as a part (for instance, if he amputates a limb), or as a person connected with him (for instance, if he carries off his daughter or his wife), it is not strictly speaking a case of theft. The third difference is that which completes the nature of theft, and consists in a thing being taken secretly; and in this respect it belongs properly to theft that it consists in taking another's things secretly." [11]

a) The sins against the seventh commandment are as various as the social connections of men

11 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 66, art. 3: *"Ad rationem furti tria concurrunt. Quorum primum convenit ei secundum quod contrariatur iustitiae, quae unicuique tribuit quod suum est, et ex hoc competit ei quod usurpet alienum. Secundum vero pertinet ad rationem furti, prout distinguitur a peccatis quae sunt contra personam, sicut ab homicidio et adulterio, et secundum hoc competit furto quod sit circa rem possessam; si quis enim accipiat id quod est alterius non quasi possessio, sed quasi pars (sicut si amputet membrum) vel sicut persona coniuncta (ut si auferat filiam vel uxorem), non habet proprie rationem furti. Tertia differentia est, quae complet rationem furti, ut scilicet occulte usurpetur alienum, et secundum hoc proprie ratio furti est, ut sit occulta acceptio rei alienae."* Cfr. Gury, I, n. 591.

and their economic condition. Unfortunately small thieves are often punished, while big ones not only go scot free, but are honored as leaders of society. Theft is by its very nature and according to the teaching of Sacred Scripture always a sin, for two reasons: "first, because of its opposition to justice, which gives to each one his due . . . ; secondly, because of the guile or fraud committed by the thief when he lays hands on another's property secretly and cunningly." [12]

b) The degree of sinfulness which stealing involves is determined, first, by the greater or less value of the property stolen (*pretium absolutum, relativum, affectionis*),[13] and, secondly, by the personal relation of the thief to his victim and the gravity of his obligation to avoid this particular sin. Hence, even though the stolen object be of little value, theft is a mortal sin if the thief,

12 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 66 art. 5: *"Si aliquis consideret furti rationem, duas rationes peccati in eo inveniet; primo quidem propter contrarietatem ad iustitiam, quae reddit unicuique quod suum est, et sic furtum iustitiae opponitur, inquantum furtum est acceptio rei alienae; secundo ratione doli seu fraudis, quam fur committit occulte et quasi ex insidiis rem alienam usurpando. Unde manifestum est, quod omne furtum est peccatum."*—Gury, I, n. 592: *"Furtum quocunque nomine appelletur, graviter per se legi naturali adversatur, ut patet tum ex ratione tum ex Scriptura Sacra, in qua adnumeratur peccatis, quae a regno caelorum excludunt. Furtum sacrilegum et rapina graviora sunt peccata quam furtum simplex et speciem malitiae diversam constituunt; illud quia praeter iustitiam violat religionem, ista quia iniustitiae addit laesionem honoris proximo debiti. Ceteri autem modi vel alia obiecta furti speciem non mutant, quia istis natura damnificationis non mutatur."*

13 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 66, art. 5.

either by reason of his office or by contractual stipulation, is under a particular obligation to protect the victim against property damage. On the other hand, an important or valuable object is required to render a theft mortally sinful if the thief is bound to his victim by the ties of consanguinity, friendship, or marriage. Generally speaking, therefore, the so-called domestic thefts (*furta domestica*), *i. e.,* those committed by married people against each other, or by children against their parents, must be judged leniently, provided the stolen object is of no great value, because the violation of justice involved in such an act may be presumed to be less *invito domino* than in ordinary cases.

Thefts committed by *servants* against their masters or employers are more serious, because they involve infidelity and a breach of trust. Note, however, that if servants steal foodstuffs which are not usually kept under lock and key, and not extraordinarily rare or costly, the fault may be extenuated, provided, of course, they do not sell them or take large quantities.[14]

14 Prov. XXVIII, 24; Matth. XV, 4–6.—Cfr. St. Alphonsus, *Theol. Mor.,* l. III, n. 526, 539 sqq. (ed. Gaudé, II, 36, 48 sqq.). —Gury, *op. cit.,* I, n. 595: *"Quaeritur, quaenam materia requiratur ut furto uxorum, filiorum et famulorum gravia evadant? Respondetur: 1. Certum est apud omnes, ex parte uxoris et filiorum plus requiri ad gravem materiam constituendam quam ex parte extraneorum, quia pater familias est minus invitus aut saltem minus rationabiliter invitus in priori casu quam in posteriori. Dicunt probabilius requiri summam duplo maiorem pro iis quam pro extraneis, sed nulla regula generalis assignari potest; hoc enim a variis personarum vel conditionum circumstantiis plerumque pendet; 2. Pro famulis pendet etiam a maiore li-*

c) *What is the sum required for a grave sin of theft?* This is a question which cannot be answered in mathematical terms, but must be gauged by the moral law. Broadly speaking, that is a notable sum of money which is required to supply a man and his family with the necessaries of life for one day. But the amount of one's possessions and the sum needed for his daily support, are not the only measure for the magnitude of a theft. There must be a certain objective limit beyond which every theft or robbery is a mortal sin, regardless of the wealth of the victim, for the property of the rich, too, needs to be protected against unjust violation. Therefore, in the case of the very wealthy, *materia gravis* is a sum large enough, on the one hand, to constitute an incitement to theft, and, on the other, to expose the fortune of the victim to considerable danger if it were frequently repeated.

The casuists have long ago endeavored to determine just when the matter of a theft becomes sufficient to constitute a mortal sin. "Since about the time of De Lugo (+ 1660)," says Fr. Slater, "it has been a common opinion among theologians that it is a grave sin of theft to rob a workingman of a sum which is sufficient to support him and his family for a day. The reason for this doctrine is obvious and satisfactory. For that quantity will

beralitate vel tenacite dominorum, ex qualitate vel situ rei surreptae, v. g. si sit comestibilis vel non, custodita vel aperta etc. Iuxta multos per furta minuta facta a famulis in cibis et esculentis, quae non solent caute servari, generatim non devenitur ad mortale, modo haec non vendantur aut domo educantur nec sint pretii extraordinarii. Si autem famuli furentur pecuniam aut res sedulo custoditas, non requiritur quantitas maior ad peccatum grave, quia domini non sunt minus inviti et talia furta severius a lege civili puniuntur."—Catech. Rom., P. III, c. 8, qu. 9: *"Nec distinguuntur a furibus servi dominorum rerumque custodes infidi; quin etiam eo sunt detestabiliores, quam reliqui fures, qui clavibus excluduntur, quod furaci servo nihil domi obsignatum aut occlusum esse potest."*

be sufficient for a mortal sin, whose theft causes a notable injury to the owner, an injury which ordinary men of prudence and sense consider serious, and which is sufficient to upset them considerably. This is the test which is applied in other matters where there is question of the grave breach of a moral law which admits of parvity of matter. . . . In the same way, when we wish to know what sum is sufficient for a grave sin of theft, we consider how important it is for maintaining peace among men that property should be secure; what quantity of money or commodities is looked upon as considerable with a view to the use that can be made of them; and what quantity will, with reason, cause the owner serious concern and chagrin if he is unjustly deprived of it. Now, to a workman, or indeed to any one who has to earn his living, the loss of what will support him and his family for a day is a serious matter; it practically means that he has worked a whole day for nothing, and such a loss causes most men, with reason, to be seriously put out."

But what about rich men, wealthy companies, governments, etc.? "In such cases we must have recourse to other considerations in order to find what quantity will constitute a grave sin of injustice when stolen. Here we consider, not so much the loss caused to the owner of the property, as the wrong done to public order and to the security of property. . . . The public weal requires that theft of a considerable sum must be forbidden in all cases, as a grave violation of justice, by the natural law. A prohibition, under pain of venial sin, not to steal a considerable sum of money, would not be sufficient to safeguard the right of property. In other words, theft of what is commonly at a certain time and place considered a notable sum of money, will be sufficient to constitute a

mortal sin of theft, even when the owner of the property stolen is not sensibly the worse off."

After reviewing the opinions of recent moralists as to the quantity which public interest requires for a grave sin of theft, Fr. Slater, making due allowance for the depreciation of money, the higher standards of comfort, and, in consequence, the relatively less value attached to money by the working classes throughout the civilized world, independently of its purchasing power, sees "no reason for increasing the quantity which the greater number of modern theologians assign as the absolute sum required for a mortal sin of theft. That quantity is about twenty shillings, and if we attach much importance, as we should do, to the opinions of such classical moralists as Lugo about such a question, the sum will rather be below than above twenty shillings." [15]

The *Compendium Theologiae Moralis* of Sabetti-Barrett, S. J., which is, we believe, used in most of our ecclesiastical seminaries, following Palmieri, Gury-Ballerini,

15 Slater, *Questions of Moral Theology*, pp. 99–115.—St. Alphonsus, *Theol. Mor.*, l. III, n. 527 (ed. Gaudé, II, 37).—Gury, *Comp. Theol. Mor.*, Vol. I, n. 593: *"Materia gravis in furto non potest rigorose determinari. Iuxta sententiam communem, quae omnino tenenda videtur, materia haec spectanda non absolute in se, sed relative ad varias hominum conditiones et necessitates, ita ut gravior materia requirenda sit ad grave peccatum in furto erga divitem quam erga pauperem. Ratio est, quia gravitas furti sicut gravitas cuiuslibet iniuriae pendet praesertim a maiori vel minori privatione, dolore et reluctantia voluntatis, quam patitur ille, in quem furtum patratur; iamvero nemo non videt, eandem materiam nunc levem, nunc gravem causare contristationem prout dominus, a quo aufertur, dives est vel pauper. Attendendum tamen est ad reluctantiam voluntatis, ut inter homines communiter et rationabiliter habetur, non vero respectu ad homines maiori vel minori amore pecuniae allectos. . . . Aliqua tamen determinanda est absoluta materia quae nunquam sine culpa gravi praeteriri possit; secus enim si proportio omnimoda servanda foret inter omnes conditiones, profecto maxima quantitas pro materia gravi in furto in valde divitem patrato requireretur, quod in societatis damnum cedere nemo est qui non videat."*

Ojetti, and others, gives *about thirty-five dollars* as the absolute sum required for a *mortal sin of theft.*[16] This is a probable opinion and may be safely followed.

d) The object of a theft may be *materia gravis* not only in itself, but also *per accidens*, namely, if a number of petty sums are stolen from one and the same person on different occasions, or from several persons. Innocent XI expressly condemned the proposition that "A man is not obliged under pain of mortal sin to make restitution of that which he has stolen in small sums, even though the total amount be considerable." [17]

Besides the objective and material value of the

16 *Comp. Theol. Mor.*, 29th ed., p. 369.

17 *Prop. damnat. sub. Innoc.* XI, n. 38: *"Non tenetur quis sub poena peccati mortalis restituere, quod ablatum est per pauca furta, quantumcunque sit magna summa totalis."* (Denzinger-Bannwart, n. 1188).—Cfr. Gury, Vol. I, n. 596 sq.—In determining when there is objective coalescence of small thefts, so that ultimately what is called *gravis materia* is stolen, theologians seek some connecting link that will bind together the petty pilferings and give them unity; for without such a bond of union they will remain isolated thefts, and will, in consequence, have merely an objective malice against justice, which corresponds to them as individual unjust acts. The intention with which the small thefts are accomplished is pointed out as one means of bringing them into moral connection with one another. When a thief intends from the beginning to arrive at a considerable amount, but, for convenience sake, takes the large sum little by little, then, no matter what length of time intervenes between the different acts of robbery, and no matter whether the objects already stolen are attained or not, there is objective coalescence, and an externally grave sin against justice has been committed. Dr. Harty says on this subject: "It seems to me to be necessary to limit this teaching in some way. Is the intention of which theologians speak a subjective intention, an internal act of the will? If so, the question arises at once: How can an internal intention bring about an objective union between different acts? A mere subjective element cannot create an objective bond of union, cannot unite a number of petty injuries so as to make them one grave injustice. Just as, accord-

stolen object, there must be taken into consideration such subjective circumstances as the heartlessness or incorrigibility of the thief. He who intends to steal an object of considerable value, but succeeds in stealing only a petty one, commits a mortal sin. So does he who successively steals small sums in order gradually to obtain a large one, and he who co-operates with others in committing grand larceny, no matter how small his personal share in the booty may be.[18]

ing to the opinion which seems the more common in the schools, an internal intention does not directly change the objective justice or injustice of an act, so too, it would seem, an internal intention cannot of itself provide an objective change in the relations of two or more acts of theft to one another; at most it regulates the subjective responsibility of the agent. A suggested solution of this difficulty is that the intention of which theologians speak is not a mere internal intention, but rather an intention which is externated by the different acts which follow from it; but I doubt if this solution, taken by itself, is sufficient to overcome the difficulty of the case, because each individual act of theft externates only an intention which corresponds to itself; nor does the whole series of acts, of necessity, externate any internal connecting intention, as can be seen from two examples, in one of which a certain number of acts of theft are performed without any initial intention of doing so, and in the other of which the same number of thefts are committed at equally long intervals in execution of an initially arranged determination. The difference between the two cases is purely internal. Perhaps the intention, which serves as an objective link between the various small thefts, is an intention which has a separate externation—separate in the sense that it must be distinct from that obtained by the mere repeated acts of stealing. This will frequently be expressly made, and frequently, too, it will be implicitly contained in the *modus agendi* of the agent. Such an externated intention would supply an objective bond which neither an internal intention nor an intention externated merely by repeated acts can give." (*Irish Theological Quarterly*, Vol. II, n. 7).

18 Gury, Vol. I, n. 598: "*Ex parte furis ablatio rei levis fit peccatum grave triplici modo, scil.*: 1. *Per intentionem perveniendi ad materiam gravem; 2. Per multiplicationem, si furta minuta ad summam gravem perveniant;* 3. *Per conspirationem, ubi plures conspirant inter se et furtula singulorum collecta materiam gravem constituunt.*"

e) As the appropriation of the property of others is unjust only when it is done against the reasonable will of the owner (*rationabiliter invito domino*), the taking of things in extreme necessity and occult compensation (*v. infra,* pp. 366 sq.) are not thefts.

A *theft committed in extreme need* is the appropriation or use of the property of another by a person who needs that property to save his life or something nearly as valuable as life (*e. g.*, the integrity of the body or liberty).

He who in a state of extreme necessity takes as much of another's goods as he actually needs, either for himself or for others in the same predicament is not guilty of theft and not bound to make restitution, provided he is actually indigent and has no reasonable hope of ever becoming prosperous.[19] He is merely exercising a right granted to him by the moral law of nature, which ordains that in extreme necessity all things are common property. In such a case, therefore, the consent of the owner may be presumed, and if he protests, his protest may be disregarded as unreasonable, and hence there can be no theft because one of the essential notes of theft is lacking.

St. Thomas explains this with his accustomed lucid-

—*Ibid.*, n. 599: *"Si fur intendens pervenire per furtula ad summam gravem renovet intentionem hanc, quoties furatur, toties graviter peccat. Si tamen ab initio intendat surripere aliquam summam determinatam per minuta furta, v. g. ..e detegatur, probabilius unicum admittit peccatum, quia unicus est actus moralis; omnes siquidem actus particulares ad quid unum efficiendum determinate tendunt."*

19 Busembaum, *Medulla Theol. Mor.*, l. III, tr. 5, c. 1, dub. 1, n. 2: *"Qui pro se vel alio in extrema necessitate constituto alienum accipit quantum necessarium est, nec furatur nec tenetur restituere postea sic absumptum, si quidem re et spe indigens fuit."*

ity as follows: "Things which are of human right cannot derogate from natural right or divine right. Now, according to the natural order established by divine Providence, inferior things are ordained for the purpose of succoring man's needs by their means. And therefore the division and appropriation of things which are based on human law, do not preclude the fact that man's needs have to be remedied by means of these very things. Hence, whatever certain people have in superabundance is due, by natural law, to the purpose of succoring the poor. . . . Since, however, there are many who are in need, while it is impossible for all to be relieved by means of the same thing, each one is entrusted with the stewardship of his own things, so that out of them he may come to the aid of those who are in need. But if the need be so manifest and urgent that it is evident that the present need must be remedied by whatever means be at hand (for instance, when a person is in some imminent danger, and there is no other possible remedy), then it is lawful for a man to relieve his own need by means of another's property, by taking it either openly or secretly; nor is this, properly speaking, theft or robbery."

And again: "It is not theft, properly speaking, to take secretly and use another's property in a case of extreme need, because that which a man takes for the support of his life, becomes his own property by reason of that need." [20]

20 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 66, art. 7: *"Ea quae sunt iuris humani, non possunt derogare iuri naturali vel iuri divino. Secundum autem naturalem ordinem ex divina providentia institutum res inferiores sunt ordinatae ad hoc quod ex his subveniatur hominum necessitati. Et ideo per rerum divisionem et appropriationem ex iure humano procedentem non impeditur, quin hominis necessitati sit subveniendum ex huiusmodi rebus. Et ideo res quas aliqui superabundanter habent, ex naturali iure debentur pauperum sustentationi. . . . Sed quia multi sunt necessitatem patientes et non potest ex*

f) The conditions under which a man may make use of this right are the following:

α) His own need, or that of the person for whom he takes the property, must be extreme (*necessitas extrema*), or at least very grave (*necessitas gravissima sive quasi extrema*);

β) He must have no other means of livelihood;

γ) The owner of the property in question must not be in equal need or likely to be subjected to equal need by the taking away of his property;

δ) The needy must have the intention of taking only what he absolutely requires at the moment and of making adequate restitution if he is able.[21]

eadem re omnibus subveniri, committitur arbitrio uniuscuiusque dispensatio propriarum rerum, ut ex eis subveniat necessitatem patientibus. Si tamen adeo sit evidens et urgens necessitas, ut manifestum sit instanti necessitati de rebus occurrentibus esse subveniendum (puta quum imminet personae periculum et aliter subveniri non potest), tunc licite potest aliquis ex rebus alienis suae necessitati subvenire sive manifeste sive occulte sublatis, nec hoc proprie habet rationem furti vel rapinae."—*Ibid.*, ad 2: *"Uti re aliena occulte accepta in casu necessitatis extremae non habet rationem furti proprie loquendo, quia per talem necessitatem efficitur suum id quod quis accipit ad sustentandam propriam vitam."*—*Ibid.*, ad 3: *"In casu similis necessitatis etiam potest quis occulte rem alienam accipere, ut subveniat proximo sic indigenti."*

21 *Prop. damnat. sub Innoc. XI*, n. 36: *"Permissum est furari non solum in extrema necessitate, sed etiam in gravi."* (Denzinger-Bannwart, n. 1186).—Cfr. Gury, I, n. 601: *"Pauperi in extrema necessitate posito plus auferre non licet quam sit necessarium. Unde si sufficiat solus usus rei, v. g. equi, cessante necessitate obligatio restituendi manet. Si extreme indigens habeat alibi in re vel in spe probabili, unde solvere possit, non potest rem alienam subducere nisi cum onere restituendi, quia necessitas tunc non exigit rem accipi gratis, si haec sublevetur re mutuo accepta vel commodata. Qui vero in extrema egestate rem alienam consumpsit, ad nihil post usum rei tenetur, si nec spem habeat fore, ut aliquando restituere possit, etsi postea ad meliorem perveniat conditionem."*

g) Akin to taking another's property in extreme need is *occult compensation* (*compensatio occulta*), *i. e.,* the secret appropriation of something to which one has a just claim (*debitum ex iustitia*), but which one cannot obtain by ordinary means. This is permissible only: (1) if the justice of the claim is indisputable, (2) if occult compensation is the only physically or morally possible means of obtaining one's own, and (3) if there is no reason for apprehending injury to a third person, *e. g.,* suspicion of theft, or scandal.[22] These three essential conditions, which must be present together to render occult compensation licit, hardly ever actually concur, especially since there must be an absolutely certain claim of justice; mere promises or claims of equity do not suffice.[23]

Occult compensation is always of doubtful moral value because it is an act of self-help, and no man is an impartial judge in his own case. Therefore Saint Thomas says: "He who, by stealth, takes his own property, if this be unjustly detained by another, sins indeed, yet not because he burdens the retainer, and so he is not bound to restitution or compensation; but he sins against general justice by disregarding the order

22 St. Alphonsus, *Theol. Mor.,* l. III, n. 521-524 (ed. Gaudé, II, 33 sqq.); cfr. Gury, I, n. 602–604.

23 Cfr. *Prop. damnat. sub Innoc. XI,* n. 37: *"Famuli et famulae domesticae possunt occulte heris suis surripere ad compensandam operam suam, quam maiorem iudicant salario quod recipiant."* (Denzinger-Bannwart, n. 1187).

of justice and usurping judgment concerning his own property. Hence he must make satisfaction to God and endeavor to allay whatever scandal he may have given his neighbors by acting in this way." [24]

To steal the *intellectual property* (ideas, writings, or inventions) of another is called *plagiarism.* It is a sin if the owner is injured thereby. There is also a sort of *ideal plagiarism,* which is committed if one seeks to appropriate to himself the reputation or glory of another, but it is often difficult to separate that which is the property of an author or inventor from that which he owes to the intellectual labors of his fellowmen. In the words of Dr. Linsenmann, no matter how firmly we stand on our own feet, the ground which we occupy has been prepared for us by others.[25]

B) *Robbery* (*rapina*) is the act of openly taking away the property of another from his person or in his presence, against his will, and under constraint of fear or force. It differs from theft by the circumstances described and is a more grievous sin for two reasons: first, because it violates personal liberty and, secondly,

24 Cfr. St. Thomas, *Summa Theol.,* 2a 2ae, qu. 66, art. 5, ad 3: *"Qui furtim accipit rem suam apud alium iniuste detentam, peccat quidem, non quia gravet eum qui detinet, et ideo non tenetur ad restituendum aliquid vel ad recompensandum, sed peccat contra communem iustitiam, dum ipse sibi usurpat suae rei iudicium iuris ordine praetermisso. Et ideo tenetur Deo satisfacere et dare operam, ut scandalum proximorum, si inde exortum fuerit, sedetur."* —Cfr. Janssen, *Der hl. Alfons von Liguori gegen Hoensbroech,* pp. 103 sqq.

25 Linsenmann, *Lehrb. d. Moraltheol.,* p. 526.

because it inflicts upon the victim ignominy and injury.[26] If violence is employed after theft has been committed in order to ward off persecution, the crime of robbery is superadded to that of theft. Robbery may be perpetrated without the application of violence by embezzling documents, giving false testimony, perjury, bribery of judges, withholding a laborer's wages, and similar sins.

Related to robbery is *extortion, i. e.,* the act or practice of obtaining from another money or other valuables by violence, threats, or compulsion, more specifically the taking of money by an official under color of his office, either when none is due, or in excess of what is due, or before it is due. Extortion approaches fraud if the threat is not applied directly to the unjust appropriation of property, but in order to compel some act or omission which entails a disadvantage

26 St. Thomas, *Summa Theol.,* 2a 2ae, qu. 66, art. 4: *"Furtum et rapina ex hoc habent rationem peccati, quod acceptio est involuntaria ex parte eius cui aliquid subtrahitur. Involuntarium autem dupliciter dicitur, scilicet per ignorantiam et violentiam. Et ideo aliam rationem peccati habet rapina et aliam furtum. Ergo propter hoc differunt specie."*—*Ibid.,* art. 9: *"Rapina et furtum habent rationem peccati propter involuntarium, quod est ex parte eius cui aliquid aufertur, ita tamen quod in furto est involuntarium per ignorantiam, in rapina autem est involuntarium per violentiam. Magis est autem aliquid involuntarium per violentiam quam per ignorantiam, quia violentia directius opponitur voluntati quam ignorantia. Et ideo rapina est gravius peccatum quam furtum. Est et alia ratio, quia per rapinam non solum infertur alicui damnum in rebus, sed etiam vergit in quandam personae ignominiam sive iniuriam, et hoc praeponderat fraudi vel dolo, quae pertinent ad furtum."*

to others, for instance, signing a receipt or omitting to bring suit.

C) *Fraud* (*fraus*) is an act of deliberate deception, practiced for the purpose of securing something to the prejudice of another.[27] Fraud is practiced in numerous forms in legal transactions and contracts, especially in sales, by deceiving the buyer as to the value, the quality or quantity of the object sold, by counterfeiting money and weights, etc. It is a very serious sin, whether regarded in its nature or in its consequences.[28] In its *nature,* because it implies deception and hypocrisy, lying, heartlessness, and injustice, all clothed in the garb of honesty and therefore difficult to discover. In its *consequences,* because he who commits fraud undermines the social order by destroying mutual confidence and creating distrust. Holy Scripture

27 St. Ambrose, *De Offic.,* l. III, c. 11 (n. 75): *"David ait: Sicut novacula acuta fecisti dolum* (Ps. 51, 4); *nequitiae arguens proditorem, eo quod instrumentum huiusmodi ad hominis adhibetur ornatum et plerumque ulcerat."* (Migne, *P. L.,* XIV, 166).—*St. Thomas, l. c.,* qu. 77, art. 1: *"Fraudem adhibere ad hoc, quod aliquid plus pretio iusto vendatur, omnino peccatum est, inquantum aliquis decipit proximum in damnum ipsius."*

28 Lev. XIX, 35 sq.; Deut. XXV, 13–16; Prov. XX, 23.—Cfr. Tertullian, *De Idololatria,* c. 1: *"Fraudis conditio ea est, opinor, si quis alienum rapiat aut alii debitum deneget, et utique erga hominem admissa fraus maximi criminis nomen est."* (Ed. Leopold, P. I, 30).—St. Ambrose, *De Offic.,* l. III, c. 9 (n. 65): *"Turpis est omnis fraus. Denique etiam in rebus vilibus exsecrabilis est staterae fallacia et fraudulenta mensura. Si in foro rerum venialium, in usu commerciorum fraus plectitur, potestne irreprehensibilis videri inter officia virtutum?"* (Migne, *P. L.,* XVI, 163).

says that those who wrong and defraud others fall into the pit they themselves have dug, and that their iniquity will be visited upon their own heads and they will "not possess the kingdom of God." [29]

Though minor frauds are not *per se* mortally sinful, yet they may become so by dint of circumstances and are to be avoided all the more because they almost invariably lead to other and more grievous acts of deception. It is this sort of iniquity which the Holy Ghost has particularly in view when He says that it is visited upon a man's children and children's children to the third and fourth generation.[30]

"Those who commit frauds," says the Angelic Doctor, "do not design anything against themselves or their own souls, but through God's just judgment it happens that what they plot against others recoils on themselves, according to Ps. vii, 16: 'He is fallen into the hole he made.'" [31]

Particular kinds of fraud are: *forging documents* and *dishonest bankruptcy*. Both shake public confidence and tend to undermine the social order. In regard to the latter it is forbidden to conceal or remove portions of property, to falsify or destroy records, etc. If a business man incurs bankruptcy by living beyond his means, or by engaging in wild speculations, he is not guilty of

29 Ps. VII, 15–17; Prov. XI, 24; XX, 17; Jer. XXII, 13; 1 Cor. VI, 8–10; 1 Thess. IV, 6; cfr. 1 Pet. II, 1.

30 Ex. XXXIV, 7.

31 Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 55, art. 5, ad 3: *"Illi qui fraudes faciunt, ex eorum intentione non moliuntur aliquid contra seipsos vel contra animas suas, sed ex iusto Dei iudicio provenit, ut id quod contra alios moliuntur, contra eos retorqueatur secundum illud* (Ps. VII, 16): *Incidit in foveam, quam fecit."*

fraud, but commits an injustice in not complying with his duties to his fellowmen.[32]

Another species of fraud is the use of *dishonest means in business competition,* such as misrepresenting the quality of goods or their source of production, slandering or otherwise injuring competitors, etc.[33]

Akin to fraud is *defalcation,* in so far as it involves an injustice, *i. e.,* a disadvantage to others or illegal favoring of one's own person or business. It is committed by fraudulently appropriating money held in trust or not employing due care in the administration of property confided to one's care, as by the executor of a will, the guardian of a minor child, the curator or administrator of an estate, etc.[34]

D) *Usury* (*usura, fenus*) is the exploitation of the necessity of others by unjustly appropriating of their property in exchange and loan transactions.[35] Its principal features are the needy condition of the victim and his ignorance or carelessness, of which the usurer takes advantage by charging more for loans than he is entitled to. The term usury is sometimes broadly used to cover dishonest manipulations in grain or other commodities, excessive charges for rent, etc.

Not only the creditor but also the debtor may become guilty of usury, namely, by abusing the

32 J. Schwane, *Die Gerechtigkeit,* p. 71.

33 J. Bachem and H. Roeren, *Zur Bekämpfung des unlauteren Wettbewerbes,* 2nd ed., Leipsic 1896; H. Mayer, *Der unlautere Wettbewerb,* Stuttgart 1909.

34 Schwane, *Die Gerechtigkeit,* pp. 71 sq.

35 Funk, *Zins und Wucher,* pp. 192 sqq.; Ratzinger, *Die Volkswirtschaft,* 2nd ed., pp. 259 sqq.

confidence of the creditor in order to appropriate his property. Thus bankruptcy proceedings are sometimes used to exploit the good nature or carelessness of creditors. The Catechism of the Council of Trent says: "Those who defraud their creditors, who deny their just debts, and also those who purchase goods on their own or on another's credit, with an agreement to pay them at a certain time, and do not redeem their pledge, shall be convicted of the crime of rapine, and it is an aggravation of their guilt that, in consequence of their want of punctuality and their fraud, prices are raised, to the no small detriment of the public." [36]

Hence usury both from the moral and the legal standpoint is as deserving of punishment as fraud, theft, and robbery.[37] Economically this crime is committed not only when a higher rate of interest is demanded than law or custom

36 *Catech. Rom.*, P. III, c, 8, qu. 12: *"Fraudatores creditorum et inficiatores quique sumpto temporis spatio ad solvendum sua vel aliena fide merces emunt neque fidem liberant, damnabuntur eodem crimine rapinarum; quorum etiam delictum gravius est, quod mercatores illorum destitutionis ac fraudationis occasione magno detrimento civitatis vendunt carius; in quos illa Davidis sententia videtur convenire: Mutuabitur peccator et non solvet* (Ps. XXXVI, 21)."

37 Ps. XIV, 1, 5; Ez. XVIII, 8 sq., 13; XXII, 12.—Cfr. *Conc. Lat. II*, can. 13: *"Detestabilem et probrosam, divinis et humanis legibus per Scripturam in Veteri et in Novo Testamento abdicatam, illam, inquam, insatiabilem feneratorum rapacitatem damnamus et ab omni ecclesiastica consolatione sequestramus, praecipientes, ut . . . (usurarii) in tota vita infames habeantur et nisi resipuerint, christiana sepultura priventur."* (Denzinger-Bannwart, n. 365).—Cfr. *Conc. Lat. V*, sess. 5; and Holweck, *Die kirchlichen Strafgesetze*, p. 276.

permit, but likewise in all cases where the borrower appropriates so much of the value created by the co-operation of his labor with the capital of others, that the lender is unable to carry on his business.[38]

Usurious manipulation of the food supply is a particularly heinous crime, all the more contemptible because it most severely affects the poor. "Amongst those who are called extortioners by the holy Fathers," says the Roman Catechism, "are they who, in times of scarcity, hold on to their grain, thus culpably producing dearth and high prices, and this also holds good with regard to all necessaries for food and the sustentation of life." [39]

"He that hideth up corn," says Sacred Scripture, "shall be cursed among the people." [40]

Habitual usury in credit or commodities is reckoned among the sins that cry to Heaven for vengeance.[41]

The crime of "usury" is committed also by corrupt and venal judges, who allow themselves to be won over by money or bribes to decide against

38 Ratzinger, *Die Volkswirtschaft*, 2nd ed., pp. 261 sqq.

39 *Catech. Rom.*, P. III, c. 8. qu. 14: *"Ex numero eorum, qui raptores dicuntur a sanctis patribus, sunt qui in frugum inopia comprimunt frumentum faciuntque, ut sua culpa carior ac durior sit annona, quod etiam valet in rebus omnibus ad victum et ad vitam necesariis."*

40 Prov. XI, 26.

41 See this *Handbook*, Vol. II, pp. 89 sq.; cfr. St. Ambrose, *De Tobia*, c. 2–22 (Migne, *P. L.*, XIV, 761); Ratzinger, *Die Volkswirtschaft*, pp. 286 sqq.

the poor and the necessitous, no matter how good their cause may be.[42]

READINGS.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 66, 77, 78.—*Catechismus Romanus*, P. II, c. 8, qu. 1–25.—Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., pp. 472 sqq.—St. Alphonsus, *Theol. Mor.*, l. III, n. 518–546 (ed. Gaudé, II, 27 sqq.).—F. X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 587 sqq.—J. E. Pruner, *Kath. Moraltheologie*, Vol. II, 3rd ed., pp. 179 sqq.—IDEM, *Lehre vom Recht*, Vol. II, pp. 239 sqq.—J. Schwane, *Die Gerechtigkeit*, pp. 67 sqq.—F. Lorinser, *Die Lehre von der Verwaltung des hl. Busszsakramentes*, 2nd ed., pp. 223 sqq.—A. Lehmkuhl, S. J., *Theol. Mor.*, Vol. I, 11th ed., n. 1109 sqq.—M. Cronin, *The Science of Ethics*, Vol. II, pp. 375 sqq., 380 sqq.—Th. Meyer, S. J., *Inst. Iuris Nat.*, Vol. II, pp. 208 sqq.—J. Rickaby, *Moral Philosophy*, pp. 255 sqq.—Calvin Elliott, *Usury: A Scriptural, Ethical, and Economic View*, Millersburg, O., 1902.—P. Cleary, *The Church and Usury: An Essay on Some Historical and Theological Aspects of Money-Lending*, Dublin 1914.

42 Ex. XXIII, 8; Deut. XVI, 19.—*Catech. Rom.*, P. III, c. 8, qu. 12.

SECTION 10

THE DUTY OF RESTITUTION

A. RESTITUTION IN GENERAL

1. DEFINITION.—Restitution is reparation for an injury done to another. To restore, says St. Thomas, is "nothing else than to reinstate a person in the possession or dominion of his property, and thus in restitution we consider the equality of justice attending the payment of one thing for another, and this belongs to commutative justice." [1] Restitution is designed to undo the consequences flowing from sins committed against one's fellowmen. Moreover, satisfaction must be made to God for the offence committed against Him in injuring His creatures. Hence, over and above the duty of making restitution for the property loss involved, there exists the obligation of atoning for the sin committed, by internal acts of repentance and

1 *Summa Theol.*, 2a 2ae, qu. 62, art. 1: *"Restituere nihil aliud esse videtur quam iterato aliquem statuere in possessionem vel dominium rei suae, et ita in restitutione attenditur aequalitas iustitiae secundum recompensationem rei ad rem, quod pertinet ad iustitiam commutativam."*—Cfr. A. Lehmkuhl, S. J., *Theol. Mor.*, Vol. I, 11th ed., n. 1127 sqq.

satisfaction, *i. e.,* the offender must be sorry for and confess his sin.

2. Necessity of Restitution.—To make restitution of ill-gotten goods, either *in re* or *in voto,* is, generally speaking, a grave obligation if the matter is important (*materia gravis*). It is so grave an obligation, in fact, that without it the sin cannot be forgiven. *"Peccatum non dimittitur, nisi restituatur ablatum,"* or *"Non datur venia, nisi restituantur ablata,"* are two fundamental maxims in Moral Theology.

The duty of making restitution is not only enforced by divine and civil law,[2] but likewise based on the moral law of nature. For he who does not restore to his neighbor the property which he has unjustly taken away from him, inflicts upon him additional injury by continuing to

2 Ex. XX, 15; XXII, 1–16; Ez. XXXIII, 14–16; Numb. V, 7; Matt. V, 23 sqq.; Mark X, 19; Luke XII, 59; 1 Cor. VI, 8; Philm. 18 sq.— *Reg. Iur. in VI° Bonif. VIII,* n. 4.—St. Ambrose, *De Offic.,* l. III, c. 3 (n. 21): *"Nec ipsae leges nos docent? Ea quae detracta sunt alicui cum iniuria personae, aut rei ipsius cumulo restitui iubent, quo furem a detrahendo aut poenis deterreant aut mulcta revocent."* (Migne, *P. L.,* XVI, 151).—St. Augustine, *Epist.,* CLIII (*al.* 54), c. 6, n. 20: *"Si res aliena, propter quam peccatum est, quum reddi possit, non redditur, non agitur paenitentia, sed fingitur; si autem veraciter agitur, non remittetur peccatum, nisi restituatur ablatum, sed ut dixi, quum restitui potest."* (*P. L.,* XXXIII, 662).—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 62, art. 2: *"Quum conservare iustitiam sit de necessitate salutis, consequens est, quod restituere id, quod iniuste ablatum est alicui, sit de necessitate salutis."*—Duns Scotus, *Comment. in Sent.,* l. IV, d. 15, qu. 2, n. 29: *"Sicut tenens adulteram non est capax paenitentiae, sed irrisor, et si talis veniat ad paenitentiam, addit peccatum peccato, ita detinens alienum et voluntate et facto, dum talis est, non est capax alicuius partis paenitentiae."*—Benzinger, *Hebr. Archäologie,* 2nd ed., pp. 294 sq.

withhold from him what is his and hindering him in the use thereof. Strictly speaking, therefore, the duty of making restitution arises solely from a violation of commutative justice, not of charity or equity, or of legal or distributive justice as such.[3]

He who is able to make restitution for an injustice which he has committed is bound in justice to do so. If he is unable, he is dispensed from the fulfilment of this duty only as long as the inability lasts.

If a man is able to make restitution, he is bound to do so; if he is unable, the duty of restitution is in abeyance while the inability continues. But no one may consider himself dispensed from this duty until he has at least made a sincere effort to comply with it. Moreover he should at all times remember his liability and cherish a firm purpose to make restitution as soon as an opportunity presents itself. This is what theologians style making restitution *in voto,* but it holds good only while the external act (*restitutio in re*) is either physically or morally impossible. Whenever commutative justice has been violated and the matter is grave, absolution should be withheld until the penitent has either made restitution, or sincerely

3 J. P. Gury, S. J., *Comp. Theol. Mor.,* Vol. I, n. 605: *"Non datur obligatio restitutionis nisi ob violationem iuris stricti seu iustitiae commutativae, non autem iuris honestatis simpliciter. Ratio est, quia hoc efficit restitutio, ut res proximo debita exaequet ius illius iniuste violatum. Iam vero hoc fieri nequit, quum de violatione iuris honestatis sermo est. Si quis enim ius laedat superioris sui vel proximi, illi denegando oboedientiam, huic solamina caritatis, violatio illa stricte reparari nequit, quia novus actus oboedientiae vel caritatis non repararet ius violatum, sed satisfaceret tantum praecepto, quod semper urget, oboediendi superiori et proximum in angustiis sublevandi."*— Cfr. St. Alphonsus, *Theol. Mor.,* l. III, n. 547; J. Rickaby, *Moral Philosophy,* p. 107.

promised to do so at the first opportunity. Absolution should be refused if the penitent has repeatedly broken his promise. Those who, though burdened with debts, live in a manner which will probably make it impossible for them ever to satisfy their creditors, are unfit for absolution. The same is true of those who, in a similar condition, refuse to deny themselves luxuries or leave restitution to their heirs, although they are able to make it themselves.

3. The "Roots" of Restitution.—Restitution may be due for one of two reasons: (a) because one holds something that belongs to another (*acceptio sive retentio rei alienae*), or (b) because one has inflicted unjust damage or loss (*iniusta damnificatio*). These are called by moralists the "roots" (*radices*) of restitution.

Sinful co-operation in acts against commutative justice (*cooperatio iniusta*) is frequently enumerated as a third root of restitution, but as it may be subsumed either under the first (*acceptio sive retentio*) or under the second division (*iniusta damnificatio*), there is no need of treating it separately.[4]

Readings.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 62, art. 6 (Rickaby, *Aquinas Ethicus*, II, 30 sqq.).—Th. Meyer, S. J.,

4 Gury, *Comp. Theol. Mor.*, I, n. 609: *"Radices restitutionis sunt causae ex quibus oritur obligatio restituendi. Ex triplici capite desumuntur, scilicet: 1. Ex acceptione rei alienae; 2. Ex iniusta damnificatione; 3. Ex iniusta cooperatione. —Cooperatio recidit quidem vel in acceptionem vel in iniustam damnificationem, sed ad maiorem rerum adeo intricatarum distinctionem eam seorsim spectare satius esse duximus."*

Inst. Iuris Nat., Vol. II, pp. 208 sqq.—H. Noldin, S. J., *Summa Theol. Mor.*, Vol. II, pp. 458 sqq.—T. Slater, S. J., *A Manual of Mor. Theol.*, Vol. I, pp. 398 sqq.—IDEM, in the *Catholic Encyclopedia*, art. "Restitution," Vol. XII, pp. 788 sq.—A. Tanquerey, *Synopsis Theol. Mor. et Past.*, Vol. III, pp. 199 sqq.—J. B. Ferreres, *Comp. Theol. Mor.*, Vol. I, pp. 501 sqq.

ARTICLE I

THE DUTY OF RESTORING PROPERTY BELONGING TO OTHERS

A man may be possessed of the property of another without a just title either through an act of injustice, *e. g.*, fraud, theft, usury, etc., or in good faith, *e. g.*, by purchase, donation, or legacy. In the former case there is a *culpa theologica, i. e.*, a formal violation of strict justice (*iustitia commutativa*), in the latter there is merely a material injustice. These two forms of unjust possession determine the manner in which restitution must be made.

The general rules for determining the duty of restitution are the following: [1]

1 P. J. Lönartz, *Die Restitutionspflicht*, pp. 77 sqq., 179 sqq., 266 sqq.—Cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 610: *"Solus rei dominus habet ius per se eam possidendi nec rei dominium amittit, ad cuiuscunque manus deveniat. Dicitur per se, quia alius possessor quilibet, etiam bonae fidei, non nisi per accidens et ex errore invincibili ius habet rem possidendi. Ex hoc autem principio sponte sua fluunt quattuor sequentia axiomata; 1. Res clamat domino, id est, domino competit ius strictum rem suam recuperandi ubicunque eam invenit; 2. Res fructificat domino. Ratio huius axiomatis est, quia fruitio necessario*

a) *"Res clamat domino," i. e.,* the rightful owner is entitled to his property, no matter into whose hands it may have fallen. This rule follows necessarily from the nature of property and ownership. In applying it, however, due regard must be paid to prescription, etc.

b) *"Res fructificat domino," i. e.,* the rightful owner is entitled to the fruits of his property, provided, of course, he has not ceded this right to others.

c) *"Res naturaliter perit domino," i. e.,* the right of ownership is bound up with the object owned and ceases with that object. If the object has perished, but its value continues, the original owner is entitled to the latter, as, *e. g.,* when a ton of wheat has been sold and the sum received is still in the hands of the seller. If a thing has perished not from natural causes, but through the fault of the possessor, the owner is entitled to restitution.

d) *"Nemo ex re alienâ locupletari potest," i. e.,* no one has a right to enrich himself with the property of another, for the fruits of that

in idea dominii perfecte includitur; 3. Res naturaliter perit domino, etenim deficiente dominii obiecto eo ipso evanescit et ipsum dominium. Si tamen existat adhuc in aequivalenti, istud aequivalens domino competit; 4. Nemo ex re alterius locupletari debet. Vel aliis verbis: Mensura restitutionis est quantitas rei detentae. Ratio patet, soli enim domino rei competit fructum aliquem ex eadem percipere. Verum haec principia generalia modificantur pro diversa conditione possessoris et aliquando pro varia locorum legislatione."—Cfr. Göpfert, *Moraltheol.*, Vol. II, p. 260.

property do not belong to the unlawful possessor, but to the rightful owner.

If the possessor cannot reach the owner, he must make restitution to his heirs.

It is quite a different thing, of course, to be benefitted *occasione rei alienae,* without injustice to anyone, for instance, by the growth of a community, the construction of a railway, the erection of a factory on or near one's property, etc.[2]

The fruits of a thing (*fructus rei*) may be:

α) *Fructus naturales,* natural, *i. e.,* derived from the thing itself (*beneficio naturae*) without the co-operation of man, or with but slight co-operation on his part, for example, fruits of trees, wood in a forest, grass on a meadow, milk, wool, etc.;

β) *Fructus industriales, i. e.,* fruits of human industry or toil, such as the profits from a sale or purchase, etc.;

γ) *Fructus mixti,* which are partly the result of industry (*ex industria*) and partly of the natural or artificial fertility of the property (*ex re ipsa*), for instance, grain, wine, etc.;

δ) *Fructus civiles,* which are derived from an object by means of the civil law, *e. g.,* rent, salary, etc. The latter category may be reduced to the first (*fructus naturales*).[3]

2 Idem, *ibid.,* pp. 118 sqq.; Slater, I, 374 sqq.

3 Gury, I, n. 613: *"Distinguendi sunt fructus diversae speciei: 1. Fructus naturales, qui ex ipsa rei substantia sine ulla aut modica hominis opera proveniunt, ut sunt gramina etc.; 2. Fructus industriales, qui potissimum actioni possessoris re utentis tribuuntur; plerumque autem fructus sunt partim naturales et partim industriales, ut segetes etc., et vocantur mixti; 3. Fructus civiles, qui non sunt fructus proprie dicti, sed ut tales a iure habentur, ut sunt redditus annui, pretium locationis etc."*— Cfr. Noldin, *Summa Theol. Mor.,* II, 391 sqq.; Slater, I, 374 sqq., 401.

1. One may be in possession of the property of another either in bad faith or in good faith. A *possessor malae fidei* is one who knows, or has good reason for believing, that the property he holds belongs to another.[4] Such a one is bound to restore to the rightful owner whatever the latter has been unjustly deprived of, that is to say:

a) The stolen property itself, for *"res clamat domino."* If the property no longer exists, its value must be restored. If it has deteriorated in value whilst under the control of the unlawful possessor, restitution must be made of the value it had when it was taken from its rightful owner. If its value has increased, it must be restored as it is, with all its fruits, for, *"res fructificat domino."* If the stolen property fluctuated in value after the theft, the owner's loss must be made good, and if he intended to sell it when at its highest value, that value must be restored to him.[5]

b) All the fruits of the property, natural, industrial, and mixed, must be restored to its owner. But any necessary or useful expenses incurred by the illegitimate possessor for the preservation or

4 Gury, *Comp. Theol. Mor.*, Vol. I, n. 622: *"Possessor malae fidei ille est, qui cognoscit rem quam accepit aut possidet non esse suam."* —St. Augustine, *De Fide et Operibus*, c. VII, n. 10: *"In iure praediorum tamdiu quisque bonae fidei possessor rectissime dicitur, quamdiu se possidere ignorat alienum; quum vero scierit nec ab aliena possessione recesserit, tunc malae fidei perhibetur, tunc iuste iniustus vocatur."* (Migne, *P. L.*, XL, 203).— Cfr. Lehmkuhl, *Casus Consc.*, I, n. 652–655.

5 Slater, I, 405.

improvement of the property, as well as such fruits as may be the result of special efforts on his part, may be deducted.

c) The damage suffered by the owner in consequence of being deprived of what belonged to him (*damnum emergens*) as well as any profits he may have lost (*lucrum cessans*), must also be restored to him.[6]

A difficulty arises if the property has fluctuated in value while in the hands of the unlawful possessor. A change in the value of an object may be either intrinsic or extrinsic. An intrinsic change occurs, for instance, in a colt that grows up to be a horse, or in a horse that becomes useless in consequence of old age. An extrinsic change of value may be brought about through a rise or drop in the market. As regards intrinsic changes, the unlawful possessor has to make restitution to the owner for any decrease in value which would not have happened had the owner kept his property, as, for example, if a fat ox grows lean or a good horse is overworked. If the value of the object has increased, the unlawful holder must restore the increment together with the object to the rightful owner, but may deduct necessary or useful expenses.

In regard to a change in value the following general rules apply:

a) If the price has risen or fallen, and the thief sold or consumed the stolen property at the time when the lawful owner had intended to sell or consume it, he must restore to the latter the price which the object would

6 St. Alphonsus, *Theol. Mor.*, l. III, n. 614–625 (ed. Gaudé, II, 94 sqq.); Gury, *Comp. Theol. Mor.*, I, n. 622–627.

have brought at that time. If the price has risen or fallen, and it is certain that the owner would have sold or consumed the property had it been in his possession at the time it fetched the higher price, restitution must be made at the higher price. If the object was one which the lawful owner had not intended to keep, and its price rose and fell, and the unlawful possessor sold or used the object when the price was lowest, he is obliged to make restitution at the lower price only, for in that case the owner suffers no loss and he himself was not enriched by the fluctuation in price. If the owner would have sold the property in case the illegal possessor had restored it at a time when its price was high, the latter is in duty bound to pay the higher price. If the owner would have consumed the object at the time when the price was low, and the thief, or his abettor, sold or consumed it at the time when the price was high, he must make restitution at the higher price, for *"res fructificat domino."* However, some moralists are satisfied with demanding that restitution be made at the lower price, for the reason that the thief, having consumed the stolen property, has not become enriched and the owner has suffered no additional loss. When there is doubt whether the owner would have kept his property until he could have gotten a higher price or would have sold it at a lower price, the thief is bound to make restitution *pro rata dubii, i. e.,* in accordance with the degree of doubt. But since, *in praxi,* all the circumstances of a case do not usually become known, it will be sufficient as a rule to make restitution of the stolen object at the price which it would have fetched at the time when it was stolen.[7]

7 Göpfert, *Moraltheol.,* Vol. II, pp. 265 sqq.; Slater, I, 406 sqq.

2. A *possessor bonae fidei* is he who is honestly, though erroneously, convinced that an object rightfully belongs to him, *e. g.*, because he has acquired title to it in a legitimate way, for instance, by purchase, inheritance, etc. As soon as he discovers that the property is not his, such a one is bound to restore it to the rightful owner, or at least give the owner notice to get it, at his own expense.[8]

a) He must restore, first, the property itself, if, or in as far as, it still exists, for *"res clamat domino."* If the property no longer exists, he must restore what he gained by its possession, on the principle that no one has a right to enrich himself at the expense of another.[9] If the stolen property has been lost, either through or without the possessor's fault, the latter need not restore its equivalent, because *"res naturaliter perit domino"* or *"casum sentit dominus."* Likewise, in case of doubt whether he has be-

8 Gury, *Comp. Theol. Mor.*, I, n. 611: *"Possessor bonae fidei ille est, qui invincibiliter ignorat rem a se possessam esse alienam seu prudenter iudicat esse suam, v. g. quia illam acquisivit titulo de se dominio translativo, puta haereditatis, legati, donationis aut emptionis. Supponitur autem illum rem possessam nondum praescripsisse; secus enim iam non esset detentor rei alienae, sed suae. Possessor bonae fidei statim ac novit rem a se possessam esse alienam, tenetur eam adhuc extantem in toto vel in parte vel in emolumento domino restituere. Ratio est, quia nisi talis possessor rem vel aequivalens restitueret, bonum alienum invito rationabiliter domino retineret, siquidem illius ius strictum violaret id retinendo, ad quod nullum ius habet, et proinde iam iniquus detentor fieret."*—Cfr. *ibid.*, n. 612–621. —Lehmkuhl, *Casus Consc.*, Vol. I, n. 648–651.

9 *Reg. Iur. in VI° Decr. Bonif. VIII*, n. 48: *"Locupletari non debet aliquis cum alterius iniuria aut iactura."*

come richer through possessing the property, or whether some portion of it is still in existence, the unjust possessor is not obliged to make restitution, for, *"in dubio melior est conditio possidentis."*

b) He must restore, secondly, all the fruits of the stolen property, in so far as they are derived from its nature (*fructus naturales*) and have not been consumed to satisfy his own needs, for *"res fructificat domino."* The *fructus industriales* belong to the possessor and the *fructus mixti* must be divided *pro rata,* but the possessor may deduct expenses and make a reasonable charge for his toil. Unnecessary and accidental expenses give no just claim for compensation. If the civil law grants to the *possessor bonae fidei* the consumed fruits, he may take advantage of this privilege.

c) If one finds that he is in possession of something that rightfully belongs to another, and to which he himself holds a legal title, he may fall back on the person from whom he has acquired the property, but he cannot make the restitution of the object to its rightful owner dependent on his own indemnification. Generally speaking, however, one who has purchased a property from another in good faith and according to the requirements of the law (*optimâ*

formâ), may await a court decision before he is bound to make restitution.

3. One who has well-grounded reasons for believing that something he has in his possession belongs to another, is a *possessor dubiae fidei* and as such strictly bound to ascertain whether or not he is the rightful owner of the property. If he neglects to make an investigation, he becomes a possessor in bad faith. One who has been in the possession of stolen property in good faith for a while, and then becomes doubtful of his title, remains in good faith until the doubt is solved (*"in dubio melior est conditio possidentis"*); he may use the property according to his good pleasure and, in case the real owner is discovered, need restore only such portions of the property as still remain, or the sum by which he has become richer in consequence of its possession. If the doubt as to the real owner dates from the time when the property was acquired, a distinction must be made. If the object has come to the possessor directly out of the hands of the lawful owner (*e. g.,* by occult compensation), it must, if the doubt persists, be restored to the latter whole and entire, for the possessor has no real title and the presumption is against him. But if he has acquired the object in question by some legitimate title (for instance, purchase, inheritance, do-

nation), and the doubt merely concerns the right of the former possessor to dispose of it, the present possessor must, according to the greater or smaller probability of the existing doubt, restore a larger or smaller portion of the property to its rightful owner, or, if his identity is unknown, to the poor. The reason is because doubt does not permit of a real *ius possessionis* and therefore imposes the duty of restitution, while, on the other hand, the lawful title of ownership supplies the defect, as it were, and restitution need consequently be made only *pro qualitate dubii.* Negative doubts do not impair the good faith of the possessor and should be treated like temptations.[10]

READINGS.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 62, art. 1–8.—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., pp. 22 sqq., 389 sqq.—St. Alphonsus, *Theol. Mor.,* l. III, n. 547 (ed. Gaudé, II, 52 sqq.).—J. E. Pruner, *Lehre vom Recht,* Vol. II, pp. 5 sqq. —J. Schwane, *Die Gerechtigkeit,* pp. 85 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheol.,* pp. 596 sqq.—A. Vermeersch, S.J., *Quaestiones de Iustitia,* 2nd ed., pp. 161 sqq.—Kutschker, *Die Lehre vom Schadenersatz,* pp. 3 sqq.—P. J. Lönartz, *Die Restitutionspflicht des Besitzers fremden Gutes,* Treves 1885, pp. 1 sqq. —F. Lorinser, *Die Lehre von der Verwaltung des hl. Busszakramentes,* 2nd ed., 1883, pp. 233 sqq.—T. Slater, S.J., *Manual of Mor. Theol.,* Vol. I, pp. 400-407.—H. Noldin, S.J., *Summa Theol. Mor.,* Vol. II, pp. 463–477.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 377–380.

10 Gury, I, n. 628–630; Lönartz, *Die Restitutionspflicht,* pp. 226 sqq.; Lehmkuhl, *Casus Consc.,* Vol. I, 3rd ed., n. 656–659; Slater, *A Manual of Moral Theology,* Vol. I, pp. 406 sq.

ARTICLE 2

THE DUTY OF REPAIRING UNJUST DAMAGE OR LOSS INFLICTED ON OTHERS

Justice may be violated not only by taking away or retaining the property of others, but also by damaging or destroying it without sufficient cause. This violation lasts until the damage or loss is duly repaired.[1]

I. One is in duty bound to make restitution if the damage or loss which one has caused involves a sinful violation of justice (*iustitia formalis*), by which the unjust deed was not merely *per accidens* occasioned, but physically or morally caused, and which is imputable to the author as formal sin or guilt (*culpa theologica*).[2] Hence if the deed in question was not the efficient cause of the damage done (*causa efficax damni per se vel in causa*), but merely furnished the occasion (*causa occasionalis*) for it, no duty of restitution arises. In the case of a purely juridical transgression (*culpa iuridica*), the obligation of making restitution does not go into effect until a court decision has been rendered, unless, of course, there is a contractual obligation of mak-

1 Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., pp. 77 sqq.; Göpfert, II, pp. 269 sqq.

2 J. P. Gury, *Comp. Theol. Mor.*, Vol. I, n. 633: *"Ut actio damnificans obligationem restitutionis inducat, de iure naturali requiritur, ut triplex conditio concurrat, nempe ut sit iniusta, causa damni efficax et theologice culpabilis: scilicet ut sit iniusta vere, efficaciter et formaliter."*

ing good any damage or loss arising from a purely juridical guilt.[8]

Reparation must be made not only of the damage intentionally inflicted, but likewise of all injuries or losses arising from that damage (*damnum emergens, lucrum cessans*), in so far as they could be foreseen, and, finally, of the expenses which the rightful owner was forced to incur in order to protect his rights.

From these principles there follow the subjoined practical conclusions:

1) He who was the cause of damage without his fault, but failed to prevent further damage afterwards when he was able to do so, must make restitution. For every man is in justice bound to take proper care that his fellowmen are not injured by his actions, and hence must prevent damage arising from his actions if he is able; neglect of this duty amounts to a formal sin of injustice. Note, however, that this duty does not bind at the risk of a comparatively serious disadvantage. Consequently, he who has inadvertently set fire to his neighbor's house, is in justice bound to extinguish the flames if he reasonably can; an apothecary who has sold poison instead of medicine, must take all available means to get it back; a physician who has prescribed the wrong drug for his patient, must correct his error, and so forth.

2) He who through his own fault caused damage to another and then vainly tried to prevent the consequences of his act, is bound to make restitution. Hence

8 Aug. Lehmkuhl, S. J., *Casus Consc.*, Vol. I, 3rd ed., n. 668–671.

a) He who sets fire to a house and then tries to extinguish the flames, but fails, is liable for the entire damage;

b) He who intentionally gives another poison, and then vainly endeavors to prevent it from taking effect, is obliged to make reparation of the injury caused by the act; the same rule applies in case of slander, bad advice, etc.

3) He who performs an illicit and at the same time unjust action, from which, *per accidens,* damage arises to another, is not bound to make restitution. This applies:

a) To the poacher who shoots a man instead of the hare he is aiming at, provided he is not guilty of criminal carelessness;

b) To the thief who attempts to steal in the house of a citizen at night and accidentally overturns a lamp, thus causing the house to catch fire;

c) To the burglar who breaks into a barn and accidentally sets fire to the hay, thus causing the destruction of the building with its contents.

d) One guilty of a crime which is falsely attributed to another, is not obliged to indemnify that other for the damage or loss he has suffered, unless the deed was committed in such a way or by such means that grave suspicion was thrown upon the other. The reason for this decision is that the act of the guilty man caused suspicion to fall upon the innocent party only *per accidens;* the real cause was an error committed by others.

A thief (or a murderer) is not *per se* obliged to make restitution to an innocent man accused of the crime he has committed; but charity may oblige him to prevent his conviction if he can do so without grave injury to himself. The duty of restitution binds the guilty party if he

committed a crime under conditions which necessarily drew suspicion to the innocent party, *e. g.,* if he placed some of the stolen goods in his house or wore his clothes or used weapons belonging to him. Whether this is the case also amid conditions which the guilty party did not create, but merely found existing, is subject to controversy.[4]

II. Damage or loss unjustly inflicted carries with it the duty of restitution even in the case of mere mediate co-operation, whether physical or moral, positive or negative,[5] provided the following conditions are fulfilled: (1) the co-operation must be unjust, (2) it must be the efficient cause of the damage done, and (3) it must be theologically culpable, that is to say, formally sinful. The amount to be restored in each instance depends on the manner and influence of the co-operation lent.

1. Positive or direct co-operation may take different forms according to the various ways in which one man can co-operate with others in inflicting injury.

a) One co-operates with another in injustice by *command* (*iussio sive mandatum*) when one induces the other, by whatever means, to do an injury in his name or on his behalf. In such a case he who commands (*iubens sive mandans*) is

4 Cfr. St. Alphonsus, *Theol. Mor.,* l. III, n. 628–629 (ed. Gaudé, II, 106 sqq.); Idem, *Homo Apostolicus,* n. 84; Göpfert, II, 273 sq.

5 Rom. I, 32.—Cfr. St. Thomas, *Summa Theol.,* 2a 2ae, qu. 62, art. 7.

to be regarded as the moral author of the injustice committed, and consequently is bound to make restitution, unless indeed the *mandatarius* exceeded the clear and definite instructions of the *mandans* or carried out an order which had been expressly revoked. In the last-mentioned case the *mandatarius* is obliged to repair the damage done. If the *mandans* will not or cannot make the required restitution, the *mandatarius,* as the secondary cause of the unjust deed, must do so if he knew, or should have known, that the deed was unjust.[6]

It does not matter, as Fr. Slater observes, "whether one of the parties is in a position of superiority with respect to the other or not, nor by what means he induces the other to perform the injurious action, whether by threats, or promises, or commands, or requests; it is sufficient if by some means he induces the other to do his unjust will. Henry II made himself guilty of the blood of St. Thomas à Becket by complaining that none who ate his bread would avenge the insults offered him. Mere approval, however, of injustice which has already been done does not render him who approves liable to restitution." [7]

The *mandans* is not bound to make restitution if he revoked his command or request and this fact became

6 Lehmkuhl, *Casus Consc.*, Vol. I, 3rd ed., n. 725–727; Slater, Vol. I, pp. 419 sq.

7 Slater, Vol. I, p. 420.

known to the *mandatarius* before he committed the unjust deed. This remains true even if the *mandatarius,* in order to obtain the promised reward, falsely alleges that he did not know of the revocation before the deed was committed; for he acted in his own name. If it is doubtful whether the unjust deed was inspired by a command or merely by a counsel, in other words, whether the person co-operating in the other's crime was a principal or an accessory, the doubt may, as a rule, be solved by ascertaining who benefited by the crime, because under the law the beneficiary is regarded as the principal agent.

b) A person co-operates with another in injustice by *counsel* if he gives him advice or urges motives or shows him how to proceed, in doing evil.[8] Whoever is guilty of this species of co-operation and knows that his advice is sinful (*consilium simplex vel nudum*), is the secondary author of the injustice committed and consequently bound to make restitution if the principal author (*causa primaria*) will not or cannot do so. If the advice in question was given officially by an expert or a confidant consulted for the purpose, *e. g.,* a confessor or an attorney-at-law, the advisor or counsellor is the moral cause of the damage, and, as such, bound to make restitution. If the advice was recalled before the unjust act was committed, together with a statement of the reasons for which it was given, the advisor (*consulens sive suadens*) can not be held to make restitution,

8 Slater, Vol. I, pp. 418 sq.

but if the advice was recalled without stating the motives for the recall, the advisor is liable *pro rata,* that is, for his share of the damage done.[9]

The advisor is not bound to restitution if the other was determined to commit the evil deed when the advice was given, for in that case the advice, though unjust and sinful, was not the efficacious cause (*causa efficax*) of the damage done. The case is different, however, if the person who actually committed the crime was partly determined to do so by the counsel given. When it is doubtful whether or not the advice given was the cause of the unjust act, the more probable view is that the counsellor is *not* obliged to make restitution.

If one merely shows another, who is already determined to do an unjust deed, how it may be done, he does not incur the obligation of making restitution, provided the means indicated were in no way essential to the execution of the crime and neither made the damage possible nor tended to increase it. For example: If I counsel a would-be murderer to poison his victim instead of shooting him, or to kill him in a different place, or at a different time than he had planned, I am not bound to make restitution. But if I pointed out to another when and where he could best carry out a contemplated robbery, which might not have been successful otherwise, I am bound to restitution. He who counsels another who is resolved to do damage, to do it at an earlier date than was intended, is not obliged to make restitution, provided it is certain that

9 *Prop. damn. sub Innoc. XI,* n. 39: *"Qui alium movet aut inducit ad inferendum grave damnum tertio, non tenetur ad restitutionem istius damni illati."* (Denzinger-Bannwart, n. 1189).—*Reg. Iur. in VI° Decret. Bonif. VIII,* n. 62: *"Nullus ex consilio, dummodo fraudulentum non fuerit, obligatur."*—Cfr. Lehmkuhl, *Casus Consc.,* Vol. I, n. 728 sqq.—Noldin, *Summa Theol. Mor.,* Vol. II, pp. 505 sqq.

the other was determined to commit the evil deed and in all likelihood would not have changed his mind. He who advised another to commit a lesser evil instead of the greater one which he planned, is not bound to make restitution, no matter whether the actual damage is done to the same or to an indefinite person. For example, if I advise X, who is determined to set fire to my neighbor's house, rather to steal something, be it from the same neighbor or from another, I am not bound to make restitution; nor if Y is about to murder another for his money, and I advise him to obtain it by theft. In the former case the owner of the house could not reasonably object to my action, since I am preventing greater injury to his property; in the latter, I merely intend to prevent the commission of a greater by counselling a smaller crime.

He who has given wicked counsel through gravely culpable ignorance is obliged to repair the damage resulting therefrom, if he is an official or expert (physician, lawyer, confessor, etc.) and his advice was asked as such, or if he merely posed as an expert, pretending a skill and knowledge which he did not possess.[10] "Others who do not specially hold themselves out as experts will not be bound to compensate those who ask their advice and suffer loss through following it. No injury was done by giving them what they asked for, no fraud was committed by the assumption of skill or knowledge which was not possessed; if they chose to follow the advice, they took the risk on themselves, and: *'scienti et volenti non fit iniuria."* [11]

c) A third way of co-operating in injustice

10 Göpfert, *Moraltheol.*, Vol. II, pp. 287 sq.

11 Slater, *A Manual of Moral Theol.*, Vol. I, p. 419.

is by giving one's consent (*consensus*) to an unjust action or voting for it. If the consent given is the *causa efficax* of the unjust action, it entails the duty of restitution, and if the *consentiens* is the sole author of the damage unjustly inflicted, he alone is bound to repair it, *e. g.,* if he was aware of the formal injustice of the evil deed, while the perpetrator was not. If, however, the consent was merely the secondary cause of the unjust action, the *consentiens* is bound to make restitution only in case the principal agent cannot or will not do so. If the consent to an unjust action is given by vote, each member of the college or community thus voting, or culpably neglecting to register a protest, is responsible for the damage done, and consequently bound to make restitution *pro rata,* nay, eventually, *in solidum, i. e.,* one for all and all for one. If the vote was taken publicly, he who knew that his vote could not possibly alter the result does not incur the moral obligation of making restitution, nor a legal obligation either, if he votes no, or appeals to higher authority, or refuses his co-operation. To submit to the decision of the majority without a protest would be tantamount to giving one's consent. If the decision is not irrevocable, he who has voted in favor of an unjust action can withdraw his con-

sent and thereby escape the burden of restitution.[12]

d) One may become co-responsible for injury inflicted also by ridicule, praise, or flattery. As a rule, the duty of restitution thus incurred is subsidiary only, that is, it binds the co-operator only in case the principal agent refuses to repair the damage or loss inflicted; but it is primary if the co-operator actually intended the damage to be done, and by his praise or flattery impaired or destroyed the imputability of his tool. Slight befuddling of another by ordinary praise, flattery, or ridicule does not, as a rule, entail the duty of restitution. If the doer of the unjust deed is led by the praise given to him on account of his action to omit restitution, his seducer is obliged to attend to it.

e) Another way of sinful co-operation is that technically known as *recursus, i. e.,* helping to perform an unjust act by furnishing protection, hiding tools, or concealing or selling the plunder, issuing false testimonials, etc. These actions entail the duty of restitution if they involve conscious or formal co-operation in the unjust deed and if they constitute a *conditio sine qua non* of

12 Gury, I, n. 688: *"Solidaritas seu obligatio restituendi in solidum est onus incumbens variis cooperatoribus integrum damnum ergalaesum reparandi. Duplex distinguitur, scilicet:* 1. *Absoluta, quae locum habet, quando quis tenetur solus damnum reparare;* 2. *Conditionata, ex qua singuli cooperatores restituere tenentur pro aliis singulis cooperatoribus deficientibus."*—Lehmkuhl, *Casus Consc.*, I, n. 731 sqq.; Slater, I, 420 sq.

its commission, so that without them the damage would not have been done, or could have been done only with great difficulty.

Conscious co-operation is not assumed on the part of those who are lawfully engaged in trading with goods that are often sold by thieves and robbers, such as weapons, dynamite, poisons, etc.

The various kinds of *recursus* also involve a violation of charity, since by doing these things a man aids his fellowmen in committing sin instead of deterring them therefrom. The case is different when the aid or protection is purely material, and given after the commission of the unjust act, unless he who renders it is bound by his official position or by contract to report the guilty parties to the authorities.[13]

He who shelters a thief, hides his tools, or accepts or purchases from him stolen articles, thus encouraging him to new adventures of the same kind, is bound to make restitution. Innkeepers, pawnbrokers, and others who receive stolen goods or money from minors, or from servants or other suspicious persons in payment for goods, thereby foment thievery and are bound to make restitution, not only for the goods received, but likewise for the damage which they encourage others to do. Lawyers who undertake unjust lawsuits, and all who protect or warn thieves in their operations, are in the same category.

The following are *not* bound to make restitution:

13 Gury, *Comp. Theol. Mor.*, Vol. I, n. 660; Aertnys, *Theol. Mor.*, Vol. I, 6th ed., l. III, n. 326 sq.

α) Those who shelter a thief to save him from punishment, shame or prison; for their purpose is to secure for him an object of a higher order. If the thief subsequently fails to make restitution, this injury is purely accidental. It is advisable, however, to admonish a thief whom one shelters to restore his ill-gotten goods.

β) Those who help an imprisoned thief to escape, in order to withdraw him from punishment, provided restitution of the stolen property is not thereby rendered impossible, and provided further that future thefts are not encouraged;

γ) Those who shelter a thief for fear of serious damage to themselves, but not with the object or intention of enabling him to continue his operations;

δ) Hosts and innkeepers who house a thief because it is their business to accommodate strangers;

ε) Lawyers who defend a thief or other criminal in matters in which he cannot defend himself.[14]

f) He who helps another to perform an unjust action is a partner in injustice (*participans*). If he divides the spoils with the other (*participans in praeda*), he is obliged to restore his portion of the loot. If his participation in the crime is physical (*participans in actione damnosa sive in crimine*), he is bound to make restitution according to the measure of his co-operation, provided that co-operation was formally sinful and one of the causes of the crime. If participation was merely remote, and not *per se* sinful, or

14 F. A. Göpfert, *Moraltheologie*, Vol. II, 6th ed., pp. 282 sq.; Noldin, *Summa Theol. Mor.*, Vol. II, pp. 510 sqq.

caused by threats of bodily injury or infamy, it does not entail the duty of restitution. If there was a conspiracy, all the participants are bound to make restitution *in solidum, i. e.,* one for all and all for one.[15]

2. The guilt of *indirect or negative co-operation in injustice* is incurred by any one who permits injury to be done to others, either by omitting to restrain the criminal by words (*mutus*), or in deed (*non obstans*), or by neglecting to report his conduct to the proper authorities (*non manifestans*). However, such negative co-operators are bound to restitution only if they were obliged to prevent the damage in justice, *i. e.,* by their office or by contract (*ex officio vel ex contractu*). Parents are responsible for damage done by their young children or by domestic animals, because the presumption is that such damage is attributable to a lack of proper care or supervision. If they are not guilty of a moral fault, and the injury done is attributable to *force majeure* (*vis maior*) or to an accident (*casus*), they are bound to make restitution only after a civil court has decided against them.[16]

Servants are bound to prevent damage to the property of their masters; but they are not bound to make good any damage done by their fellow-

15 Lehmkuhl, *Casus Consc.*, Vol. I, 3rd ed., n. 734 sqq.

16 Noldin, *Summa Theol. Mor.*, II, 573 sq.

servants, unless the damaged property had been entrusted to their special care or custody,[17] and even in that case only if the master cannot obtain compensation from any other source.

Generally speaking, the duty of restitution arises from negative co-operation in an unjust action only when the non-prevention of damage was culpable, and the real author of the damage does not make proper compensation to the owner. Those who are obliged to prevent damage as a matter of charity only (*ex caritate*), are not bound to make restitution unless they helped to inflict the damage when it was in their power to prevent it. For example, he who accepts money from a thief as an inducement not to sound the alarm or to call in the police, or who effectively hinders some one bound *ex iustitia* to report the theft, is guilty of positive co-operation and therefore bound to restitution.

A confessor who, through gravely sinful neglect or gross ignorance, omits to remind a penitent of his duty to make restitution for damage unjustly inflicted, is not bound to make restitution instead of his penitent. He is bound *ex iustitia* to instruct his penitents properly and therefore commits a mortal sin, no matter whether the cause of his omission be ignorance or carelessness; but his silence is not a *causa efficax damni,* and hence does not entail restitution. If, however, the penitent directly asked the confessor whether he was obliged to make res-

17 Lehmkuhl, *Casus Consc.*, I, n. 737 sqq.

titution, and the latter remained silent, he would have to make compensation himself, because his silence would then be the direct cause of the damage resulting to the injured party. He who is silent seems to consent if he is able to speak and it is his duty to speak.[18] It goes without saying that a confessor who would release a penitent from the manifest duty of making restitution, would incur that duty himself. The same is true, *mutatis mutandis,* of a confessor who would compel a penitent not bound to restitution to repair damage for which he was responsible, for in both cases the confessor would be the positive and efficient cause of the damage inflicted.[19]

READINGS.—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., pp. 77 sqq.—J. P. Gury, *Comp. Theol. Mor.,* Vol. I, n. 631 sqq.—F. A. Göpfert, *Moraltheologie,* Vol. II, 6th ed., pp. 269 sqq.—H. Noldin, S.J., *Summa Theol. Mor.,* Vol. II, pp. 477–520.—T. Slater, S.J., *A Manual of Mor. Theol.,* Vol. I, pp. 408 sqq.—A. Tanquerey, *Synopsis Theol. Mor. et Past.,* Vol. III, pp. 202–234.

ARTICLE 3

THE CIRCUMSTANCES OF RESTITUTION

The circumstances of restitution are indicated in the questions: Who must make restitution? To whom must it be made? How much? How? In what order? In what manner? At what time? Where? They are briefly contained in the memorial verses:

18 *"Qui tacet, consentire videtur, si loqui potuit et debuit."*

19 H. Noldin, S. J., *Summa Theol. Mor.,* Vol. II, pp. 514 sq.

Quis? Quid restituet? Cui? Quantum? Quomodo? Quando?
Ordine? Quove loco? Quae causa excuset iniquum?

1. *Quis?* Who must make restitution? Every one who possesses unjustly acquired property or who has intentionally inflicted injury upon another.

When it is a question of unjustly acquired property (*res aliena*), the first one who is bound to make restitution is the actual possessor, if the object still exists, or else he who has consumed or sold it. The actual possessor has the right of recourse on previous possessors.

Where damage has been unjustly inflicted (*damnificatio*), the real author of the damage is bound to make restitution. If two or more co-operate in causing the damage without a previous agreement or mutual understanding, each is responsible for the injury he himself inflicts; if there is an agreement or mutual understanding, the duty of restitution binds one and all *in solidum*,[1] in the following order:

If all the participants co-operated equally in causing the damage, all are equally bound to restitution; if the participation was unequal or subordinate, the duty of restitution binds unequally, in this order: first, the possessor in bad faith;

1 "*Omnes et singuli in solidum tenentur.*"—Cfr. J. P. Gury. *Comp. Theol. Mor.*, Vol. I, n. 668–672.

secondly, the *mandans* and *consentiens;* third, the executor of the mandate, and, fourth, all who positively or negatively co-operated in the evil deed. If the possessor or the principal author of the damage has made full restitution, or if he has been released from the obligation of making restitution by the lawful owner, those who co-operated in the unjust deed are also released. If the former refuses or neglects to make restitution, the latter must do so, but has the right of recourse on the former. If one of the secondary participators in the injury is released from the duty of restitution, the others remain bound. When it is uncertain which of several participators is the author of the damage done, all are responsible *in solidum,* because the party who has suffered the damage must not be robbed of his title to restitution on account of the existing uncertainty.

As the duty of restitution to be made by several participators *in solidum* is not easily understood by uneducated persons, it is often necessary, even when the obligation is certain, to be satisfied with a partial restitution, because otherwise the injured party may receive nothing at all.[2]

2 St. Alphonsus, *Theol. Mor.,* l. III, n. 579: *"Advertendum tamen, quod rudes, etsi teneantur in solidum, raro expedit obligare ad totum, quum difficulter isti sibi persuadeant, se teneri ad restituendam partem a sociis ablatam; quinimmo satis praesumi valet, quod ipsi domini quibus debetur restitutio, consentiant, ut illi restituant tantum partem ab eis ablatam, quum aliter valde sit timendum, ut nihil*

2. *Quid et quantum?* What is to be restored and how much? The answer to this question, broadly speaking, is: Everything a man unjustly possesses must be restored to the rightful owner, and all damage unjustly inflicted upon another must be repaired. If restitution cannot be made in full, it should be made as fully as possible, even if the person obliged to make it has to limit his expenses to the necessaries of life. He should further endeavor to advance the interests of his victim to the best of his ability, avert injury from his property and pray God to bless him.

In addition to material and temporary, spiritual damage must likewise be repaired. In cases where the positive law requires less than the law of conscience, he who is bound to make restitution should not be satisfied with complying with the demands of the law, and if the law imposes more onerous duties than conscience, he must comply with the former, at least after judgment has been rendered in court (*post iudicis sententiam*).

Note, however, that when a judicial sentence imposes more than the moral law of nature requires, the party entitled to restitution should not insist on the plus, especially if the other party is poor.[3]

3. *Cui vel quibus?* To whom should restitution be made?

a) Restitution should be made to the lawful

restituant, si obligentur ad totum." IDEM, *Homo Apost.*, tr. X, n. 54; IDEM, *Praxis Confess.*, n. 44.

3 Noldin, II, pp. 520 sqq.; Tanquerey, III, pp. 234 sqq.; Slater, I, pp. 426 sqq.

owner of the stolen property, no matter whether he be an individual or a community, *e. g.,* the State or a corporation. After the death of the person entitled to restitution his claim passes to his heirs or, if the stolen property has been left to some one as a legacy, to the legatee. Briefly, restitution must be made to him who is the certain and known owner of the property,[4] and this holds even if the possessor has come into possession of the property at third or fourth hand. Thus if one has taken a stolen object from a thief, he must restore it, not to the thief, but to the legitimate owner. This duty binds even if the object is purchased and the purchaser runs the risk of losing the purchase price by giving the stolen article back to its owner. The reason is that the lawful owner retains the right in his property (*"res clamat ad dominum"*).

b) If the owner is unknown (*dominus incertus*), careful inquiry (*debita diligentia*) must be made to find him. This inquiry must comply with the prescriptions of the positive law or else with custom. If the owner cannot be identified, the one who possesses the object in good faith may retain it, though under certain conditions it may be more advisable to give the property to the poor or to use it for charitable purposes.[5]

4 *"Restituendum est domino certo et noto."* Cfr. Noldin, II, pp. 520 sqq.

5 Numb. V, 7 sq.—St. Thomas, *Summa Theol.,* 2a 2ae, qu. 62, art. 5, ad 3.—Cfr. St. Alphonsus,

He who possesses a stolen object in bad faith, may not keep it, but should devote it to a pious cause or to the public welfare. If he is poor himself, he may keep a *res incerta,* which ought to be given to the poor, and thus release himself from the duty of restitution, even if this duty arose out of an unjust act. When doubt exists as to who is the rightful owner of a stolen object, this doubt may extend to a few (say, three or four) persons, or to many. In the former case the property must be restored *pro rata* to the presumptive owners, unless they agree to some other mode of restitution; in the latter case, *e. g.,* where one has committed a number of petty thefts by using false weights or measures, restitution can be made to the poor or to some charitable institution, but not by temporarily giving better measure or by lowering the price of goods unless the patronage remains about the same, for in this supposition the injured parties could easily be remunerated by this simple device.

Theologia Moralis, l. III, n. 580: *"Quaeritur, si res post debitam diligentiam adhibitam ad inveniendum dominum tradita sit pauperibus et postea dominus appareat, utrum ei restituenda sit. . . . Quando spectatis omnibus circumstantiis non est amplius possibile, quod dominus inveniatur, tunc pauper acquirit rei absolutum dominium sine ullo onere restitutionis; quando vero adhuc post diligentiam adest aliqua spes inveniendi dominum rei, tunc pauper non acquirit eius dominium et proinde debet eam domino servare ipsique restituere, si compareat."* (Ed. Gaudé, II, 78).—Noldin, *Summa Theol. Mor.,* Vol. II, pp. 522 sqq.

c) When restitution has to be made to fire insurance companies, the case is generally one of *dominus incertus*. Dr. Göpfert lays down the following rules for such cases:

If one has set fire to his own or somebody else's property, he must make restitution of the insurance received, as follows: (1) If the money was received from a State insurance institution, supported from the public treasury, and the loss affects the whole community rather than the institution itself, restitution may be made to the poor or to some public institution; (2) if the money came from a private insurance company, restitution should be made to that company's treasury. When it is certain, however, that the money will not go to the real owners (for instance, because it will be embezzled), it may be turned over to the poor or to some pious cause or charity unless the danger of embezzlement can be obviated by other means. As insurance companies often reinsure their risks, up to eighty or ninety per cent., with other companies, it may be uncertain who actually suffered the loss and to how much it amounts. Some hold that these companies really suffer no injury at all, since they fix their premiums according to all the risks incurred, including fraud as well as fire. Hence the real sufferers are the insured property-owners, but as these, on account of their large number, would receive only a very small sum each if restitution were made to them, a charitable cause may be substituted.[6]

d) In regard to debts arising from a written or an oral contract, *e. g.*, deposits or loans, if the creditor and his heirs cannot be ascertained, there is no obligation to donate the money to the poor or *ad pias causas,* since it is

6 Göpfert, *Moraltheol.*, Vol. II, pp. 209 sq.; cfr. Noldin, II, pp. 530 sq.

justly regarded as ownerless property under the natural law.

If one is bound to make restitution to two or more persons, but cannot pay them all, he must satisfy their claims in the order of their importance. Hence compensation must first be made to those who have a *ius reale, i. e.,* a right to the property in question, even if the others get nothing. Second in line are those to whom the debtor owes something *ex titulo oneroso* or *ex delicto, e. g.,* by contract or in consequence of fraud or usury. Among the debts *ex titulo oneroso* the first to be paid are the *debita privilegiata, i. e.,* court fees, expenses incurred for food and lodging, the wages of servants and workingmen, etc. They take precedence even over the *debita ex delicto.* Finally, certain debts (*debita certa*) take precedence of uncertain debts (*incerta*). Uncertain debts are those payable to persons whose identity is not fully established. Debts secured by pawns or mortgages precede those not so secured.[7]

If several creditors have equal claims, they must be satisfied equally. If the property has passed into the hands of a receiver, those obliged to make restitution should pay, not the receiver, but the creditors, unless the civil law provides otherwise.

4. *Quando?* When must restitution be made? This question is solved by St. Thomas as follows: "As it is a sin against justice to take another's property, so also it is to withhold it, since

7 *Reg. Iur. in VI° Decr. Bonif. VIII,* n. 54: *"Quia prior est tempore, potior est iure."*—Cfr. H. Busembaum, *Medulla Theol. Mor.,* l. III, tr. 5, c. 2, dub. 7, a. 2, n. 2: *"Si restitutio facienda sit ratione iniustae actionis, prius restitui debent certa, hoc est, quorum domini cognoscuntur, quam incerta, quia illa iure naturae debentur suis dominis, haec autem iure solo positivo pauperibus."* Cfr. Noldin, II, pp. 524 sqq.

to withhold the property of another against the owner's will is to deprive him of the use of what belongs to him, and to do him an injury. Now it is clearly wrong to remain in sin even for a short time, and one is bound to renounce one's sin at once, according to Ecclus. XXI, 2: 'Flee from sin as from the face of a serpent.' Consequently one is bound to immediate restitution, if possible, or to ask for a respite from the person who is empowered to grant the use of the thing." [8] And again: "Although the precept which enjoins the making of restitution is affirmative in form, it implies a negative precept, forbidding us to withhold another's property." [9]

Restitution, therefore, must be made at the first opportunity that presents itself, if it can be done without serious inconvenience (*sine gravi incommodo*); at least one must be sincerely resolved to make restitution as soon as possible (*quamprimum.*) This duty not only binds the possessor in bad faith, but he who is in good faith must likewise make restitution to the lawful owner

8 *Summa Theol.*, 2a 2ae, qu. 62, art. 8: *"Sicut accipere rem alienam est peccatum contra iustitiam, ita etiam detinere eam, quia per hoc quod aliquis detinet rem alienam invito domino, impedit eum ab usu rei suae et sic ei facit iniuriam. Manifestum est autem quod nec per modicum tempus licet in peccato morari, sed quilibet tenetur peccatum statim deserere secundum illud: Quasi a facie colubri fuge peccatum* (Eccli. xxi, 2). *Et ideo quilibet tenetur statim restituere, si potest, vel petere dilationem ab eo, qui potest usum rei concedere."*

9 *Ibid.*, ad 1: *"Praeceptum de restitutione facienda, quamvis secundum formam sit affirmativum, implicat tamen in se negativum praeceptum, quo prohibemur rem alterius detinere."*—Noldin, II, pp. 531.

as soon as he perceives that property which he has in his possession belongs to another.

To resolve not to make restitution, or willfully to postpone it, is a new sin, and any additional damage or loss that results to the owner from such postponement, if intended or foreseen, involves a further duty of restitution. If the postponement is caused by real want, fear of scandal or infamy, or dread of losing one's financial status under the law, it is excusable, provided the creditor is not in dire need. In every case the debtor must be ready to reduce his living expenses as much as possible in order to be enabled to make restitution.

If restitution has to be made in consequence of a formal act of injustice, but is postponed for sufficient reasons, any loss or damage resulting from the delay must also be made good, unless the creditor himself might easily have prevented it, but knowingly and willingly omitted to take the proper precautions.

In the case of contractual debts the debtor is not liable for damage that arises to the creditor if the payment of the debt is delayed without any fault of his.

5. *Ubi?* In determining the place where restitution should be made, it is necessary to distinguish between him who possesses the property of another in good faith and him who possesses it in bad faith.

a) The possessor in good faith must make restitution *"ibi, ubi est res,"* that is, he is bound to notify the owner that the property is in his possession and will be surrendered to him at his own

cost or risk. The cost and risk of transfer, therefore, fall upon the owner, for, *"Casum sentit dominus," or "Quod casu perit, domino perit."* The possessor who is in good faith satisfies his obligation if he hands the property over to a reliable agent for delivery to the lawful owner.

b) He who in bad faith possesses property belonging to another as well as he who has injured another unjustly, must make restitution *"ibi, ubi est dominus,"* that is to say, he must return the property to the place where it would be if he had not taken, damaged, or unjustly retained it. This duty binds until the property has been restored to its rightful owner. The *possessor malae fidei* has, moreover, to bear the cost of transportation, unless the owner himself has designated the manner of its return, or expressly left it to the choice of the debtor, and the latter chose a common and safe carrier, or the matter has been attended to by a court of justice.

The question whether the *possessor malae fidei* would be responsible for the cost of transportation in case it exceeded the value of the property itself, has become futile under modern conditions, where transportation is both cheap and safe.[10]

6. *Quomodo?* In what manner should restitution be made? He who cannot restore the

10 Cfr. St. Alphonsus, *Theol. Mor.*, l. III, n. 597 sq. (ed. Gaudé, II, 82 sqq.); Idem, *Homo Apostolicus* n. 65.

whole of what he owes to another, must restore as much of it as he is able. Restitution need not *per se* be public, for the *restituens* may and must protect his good name or reputation. Only if the injury inflicted was notorious and resulted in public scandal, must restitution be made publicly, in order that not only the damage, but also the scandal, may be repaired.

a) Restitution need not be made in person, but through any reliable agent, *e. g.,* the confessor, who in such cases must take due precautions that the seal of the confessional is not endangered. If the confessor feels that he would draw suspicion on himself by serving as agent, he need not assume the task.

If the unjust possessor cannot restore the stolen object in kind without danger to his good name, he may return an equivalent, but is bound to make compensation for any loss that may result to the owner from the fact that he does not receive back the stolen property *in individuo.*

If the stolen property cannot be restored to the owner *sub titulo restitutionis* and without disclosing the identity of the thief, the form of a gift or present may be chosen. In that case, if the donee makes a present in return, this may not be accepted if the principal motive for making it was to make a return for the present received, but it may be retained if the receiving of the present was the occasion rather than the cause of the return being made.[11]

Restitution may, finally, be made *creditori creditoris,* that is to say, by paying a debt owed to a third party by the creditor, provided it is of equal amount, and

11 Slater, *A Manual of Moral Theology,* Vol. I, p. 435.

the creditor is reliably informed of the payment made.

A declaration of *bankruptcy* does not excuse the debtor from paying his creditors, if he becomes able to do so later, for the assignment of his property for the benefit of his creditors (*cessio bonorum*) merely assures him the protection of the law and a temporary respite.

In making restitution care should always be taken that it is not done in such a way as to bring suspicion upon an innocent third party.

b) If the *confessor* undertakes the task of making restitution for a penitent, he should see to it:

α) That the seal of confession is kept inviolate. The theory that a penitent, in commissioning the confessor to make restitution in his name, thereby relinquishes his right to have the matter kept secret, is untenable. Hence the confessor must appoint another to make the restitution or divide the sum to be repaid into installments if he has reason to fear that the real author may otherwise be discovered.

β) That the party to whom restitution is made gives a receipt for the article or sum of money restored, and that this receipt is handed to the person making the restitution.

γ) That, if the person to whom restitution is due, cannot be found, the sum involved be given to the poor.

If the rightful owner refuses to accept the restitution offered, the money reverts to the penitent. If the latter cannot be found, the confessor may keep the money,[12] but is advised to donate it to some charitable cause.

Readings.—Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., n. 129 sqq.—St. Alphonsus, *Theol. Mor.*, l. III, n. 579 sqq., 676 sqq.

12 Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., 177 sqq.; St. Alphonsus, *Theol. Mor.*, l. III, n. 696 sqq. (ed. Gaudé, II, 161 sqq.); Lehmkuhl, *Theol. Mor.*, Vol. I, 11th ed., n. 1228–1238.

(ed. Gaudé, II, 71 sqq., 151 sqq.).—J. E. Pruner, *Lehre vom Recht,* Vol. II, pp. 50 sqq.—F. Lorinser, *Die Lehre von der Verwaltung des hl. Buszsakramentes,* 2nd ed., pp. 271 sqq.—F. A. Göpfert, *Moraltheologie,* Vol. II, 6th ed., pp. 289 sqq.—A. Tanquerey, *Synopsis Theol. Mor. et Past.,* Vol. III, pp. 234 sqq.—T. Slater, S.J., *A Manual of Mor. Theol.,* Vol. I, pp. 424 sqq.

ARTICLE 4

CAUSES WHICH EXCUSE FROM RESTITUTION

The obligation of making restitution ceases absolutely and for ever the moment it has been certainly and completely fulfilled. When it is doubtful whether or not restitution has actually been made, it may be presumed in cases where the debtor is in the habit of meeting his obligations promptly and can adduce in his favor reasons which render it very probable that he has made the required compensation.

Though the duty of making restitution for goods unjustly acquired, or damage unjustly inflicted, is a most important one, yet there may be reasons (*causae*) which excuse one from complying with it, for, as the theologians say, "Restitution is not necessary as a means of salvation." [1] These causes either excuse the debtor from making restitution for ever (*omnino sive in perpetuum*), in which case there is an *excusatio*

1 *Restitutio non est necessaria ad salutem necessitate medii.*"

plena, which completely extinguishes the obligation; or they excuse him only for a time (*ad tempus*), in which case the obligation is merely suspended. Causes of the latter kind are known as *suspendentes.*[2]

1. The chief causes which excuse from restitution for ever are: (a) Remission or condonation on the part of the rightful owner of the property involved; (b) legal prescription; (c) compensation; (d) entry of the debtor into an approved religious institute, and (e) a papal dispensation.

a) *Remission* or *condonation* (*remissio sive condonatio*) supposes that the rightful owner is able and willing to give up his claim to restitution, *i. e.,* that he has power and dominion over the property involved and has not been forced to relinquish his claim by fear or violence. Children, wards, administrators, and religious, cannot validly remit or condone a claim to restitution without the consent of their parents, guardians, or superiors, respectively.

Equivalent to free remission or condonation, according to the common teaching of theologians, is the certain *presumption* that the owner does not insist on restitution nor

2 Cfr. Elbel-Bierbaum, *Theol. Mor.,* Vol. II, 3rd ed., p. 6, n. 324, where ten such causes are given.—Lehmkuhl (*Theol. Mor.,* Vol. I, pp. 705 sqq.), following Reuter (*Theol. Mor.,* P. III, n. 351 sqq.), enumerates fourteen (cfr. Reuter-Lehmkuhl, *Nee-Confessarius,* n. 233).

expects it to be made (*certo praesumpta voluntas domini*), even though he has not expressly said so.[3] This presumption (which must be based on solid grounds) may be reasonably invoked in favor of minors, husbands and wives, brothers and sisters, and other relations, and also in favor of servants, when the amount involved is small; for in all these cases it is reasonable to assume that the owner, if requested, would readily grant the desired condonation.[4]

b) Legal *prescription* (*praescriptio*) or *usucapio,* that is, continued exercise of the right of ownership for a certain definite time, also excuses from restitution, under the usual conditions, but may be claimed only by those who are in good faith, not by those who possess property in bad faith or doubtfully.[5]

c) *Occult compensation* (*compensatio occulta*) consists in covertly taking one's own from another, who unjustly holds it, or in inflicting upon that other an injury equal to the value of the object claimed.[6] Occult compensation is allowable in conscience on four conditions:

α) The debt must be morally certain. If I have only a probable right, I may have recourse

3 Scavini-Del Vecchio, *Theologia Mor. Univ.*, Vol. II, 5th ed., n. 298 (p. 211): *"Remissio etiam tacita valet, nam ex iuris regula 'taciti et expressi consensus eadem ferme est vis atque conditio.' Immo etiam certò praesumpta, ut satis communiter docent cum Angelico: Quod enim dolo facit, qui putat dominum consensurum fuisse? Hinc dominus ob levia furtula servum expellens eidem remittere censetur omnem obligationem, eo quod nihil petat."*—Cfr. St. Alphonsus, *Theol. Mor.*, l. III, n. 700 (ed. Gaudé, II, 164).

4 Noldin, *Summa Theol. Mor.*, Vol. II, pp. 534 sq.

5 *"Possessor malae fidei ullo tempore non praescribit."*—(*Reg. Iur. in VI° Decr. Bonif. VIII*, n. 2).

6 *V. supra,* pp. 366 sq.

to the law to have the question decided, but with nothing more than probability on my side, I must not deprive another of what he possesses with a probable right on his side. In such a case, "*melior est conditio possidentis.*"

β) There must be a difficulty in vindicating my right by the ordinary legal process. Public order and peace require that I should not take the law into my own hands. Even though there be no fear of a breach of peace from occult compensation, yet no man is a safe judge in his own case.

γ) I must not secretly take what belongs to me when there is likelihood that I may be paid in the long run; for by so doing I should wrong my debtor.

δ) Compensation must, as far as possible, be made in the same kind of property. The debtor must not be forced to barter or sell his property against his will.[7]

Of these conditions the first is the most important; but all should be loyally and conscientiously observed in those special cases where recourse is had to occult compensation.

The fact of occult compensation being established, no further restitution need be made.

d) Profession in an approved order or congregation (*professio religiosa*), which implies a renunciation of all property rights, excuses from restitution only if the

7 Slater, *A Manual of Moral Theology*, Vol. I, pp. 452 sq.; cfr. *Noldin*, II, pp. 453 sq.

creditors are not injured, or the debtor is absolutely insolvent, so that his creditors expect nothing from him. If he can make restitution by postponing his entrance into religion, the more reasonable and safe course will be to satisfy his creditors before he bids adieu to the world. The Code of Canon Law prescribes that those who "are burdened with debts which they are unable to discharge" may not licitly be admitted as novices in any religious order or congregation.[8] This holds even though the order or congregation is willing to pay his debts. For, as Fr. Augustine observes, "such an offer would imply alienation of the goods of the order, which is not permitted."[9]

e) A *papal dispensation* (*compositio pontificia*) can be applied only to cases where restitution may be made *ad pias causas,* hence only to uncertain obligations when the owner cannot be ascertained, and to restitution which has to be made to the Church in obedience to ecclesiastical laws; also to ecclesiastical goods and revenues, for instance, where a cleric has to make compensation for having unjustly held a benefice or having neglected to say his Breviary. In all these cases it must be shown (a) that the injustice was not committed in view of the dispensation to be obtained, and (b) that full restitution is impossible. Whenever the rightful owner is known, the Pope cannot remit the duty of making restitution to him because he has no direct dominion over the property of others.[10]

8 *C. I. C.*, can. 542, 2°.

9 Charles Augustine, O. S. B., *A Commentary on the New Code of Canon Law,* Vol. III, p. 213. Cfr. Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., 190 sqq.; Elbel-Bierbaum, *Theol. Mor.,* Vol. II, 3rd ed., p. 6, n. 335, 342 sqq.; Lehmkuhl, *Theol. Mor.,* Vol. I, p. 705.

10 J. E. Pruner, *Lehre vom Recht,* Vol. II, p. 79; Idem, *Kath. Moraltheologie,* Vol. II, 3rd ed., p. 221; cfr. Lehmkuhl, *Casus Conse.,* Vol. I, 3rd ed., 783 sqq.; Göpfert, *Moraltheol.,* Vol. I, 6th ed., pp. 296 sqq.

2. A temporary postponement is justified by *physical and moral inability to make restitution* and by *bankruptcy.*

a) *Physical* (*impotentia physica vel absoluta*) [11] as well as moral inability to make restitution constitute a valid excuse as long as they last, for no one can be held to do what is beyond his power.[12] Moral incapacity (*impotentia moralis*) exists when a man cannot make restitution without impairing goods of a higher order, such as life, health, honor or good name, or without exposing himself and those dependent upon him to severe want or to destroy his entire honestly acquired fortune.[13] It is assumed, of course, that the rightful owner is not exposed to

11 Cfr. Gury, *Comp. Theol. Mor.*, Vol. I, n. 687: *"Impotentia physica seu omnimoda impossibilitas, quae habetur in necessitate extrema, immo etiam in necessitate valde gravi sive debitoris ipsius sive suorum, id est uxoris et proximorum consanguineorum."*—Cfr. Noldin, II, pp. 535 sq.

12 *Reg. Iur. in VI° Decr. Bonifat. VIII*, n. 6: *"Nemo potest ad impossibile obligari."*—C. 5, X *de usuris*, V, 19: *"Illi, qui non habent in facultatibus, unde usuras valeant restituere, non debent ulla poena mulctari, quum eos nota paupertatis excuset."*—Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 62, art. 8, ad 2: *"Quando aliquis non potest statim restituere, ipsa impotentia absolvit eum ab instanti restitutione facienda, sicut etiam totaliter a restitutione absolvitur, si omnino sit impotens, debet tamen remissionem vel dilationem petere ab eo, cui debet, aut per se aut per alium."*

13 Gury, *Comp. Theol. Mor.*, Vol. I, n. 687: *"Impotentia moralis seu gravis difficultas restituendi, id est, si restitutio fieri nequeat absque gravi incommodo debitoris, v. g. si deberet restituendo notabiliter decidere e statu suo iuste acquisito aut in gravem necessitatem incidere etc. Ratio est, quia tunc est vera impossibilitas restituendi; in moribus enim dicitur impossibile quod est valde difficile et quod decenter et honeste fieri non potest."*—Cfr. Elbel-Bierbaum, *Thol. Mor.*, Vol. II, 3rd ed., P. VI, n. 197 sq., 336 sqq.; Lehmkuhl, *Casus Consc.*, Vol. I, 3rd ed., n. 769 sq.

the same danger if restitution is not made, for "*melior est conditio innocentis quam nocentis.*" When there is real incapacity to make restitution, a third person (for instance, the confessor) may intercede with the creditor to obtain a remission or postponement. Whoever is incapable of making restitution must be willing to do so in case he becomes able, make every reasonable effort and actually do his duty as soon as he can.

b) *Bankruptcy* (*concursus creditorum*) is a judicial proceeding by which a person, who has been legally ascertained to be insolvent, is adjudged to be discharged from his indebtedness upon surrender of his property (*cessio bonorum*) for *pro rata* distribution among his creditors.

Bankruptcy may be voluntary or forced. It is voluntary (*cessio bonorum voluntaria*) if freely accepted by the creditors of the bankrupt man or firm; it is forced if they are compelled to accept it by a decree of court. Voluntary bankruptcy [14] is really nothing more than a sort of mutual agreement between debtor and creditors.

If the debtor is incapable of meeting the demands of his creditors, he may either cede to them his property voluntarily for the satisfaction of their claims, or wait till he is compelled to do

14 In the U. S. a corporation, a minor, or an insane person cannot become a voluntary bankrupt under the Federal Bankruptcy Act of 1898, which superseded the various State insolvency laws till then in force.

so by the courts, but in either case he remains bound in conscience to make good the deficiency as soon as his financial condition permits, unless the creditors release him from this obligation.

He who gives up his property to satisfy his creditors, may retain as much of it as he needs to support himself and his family in accordance with their station in life. The fraudulent concealment or removal of valuable objects, or any notable preference shown to particular creditors is punishable under the civil law and a mortal sin.

If a bankruptcy is fraudulent, it entails the duty of complete restitution. If it is the result of culpable carelessness, the debtor is bound to make restitution to his creditors to the best of his ability. If there is no guilt involved, this obligation does not bind unless and until the debtor again becomes prosperous and has an income exceeding the requirements of his station in life.

When one is in doubt whether or not he has paid his debts, he is obliged to pay. For a certain demand of justice cannot be satisfied by an uncertain payment, because commutative justice demands equality (*aequalitas rei ad rem*). Most authors declare the debtor to be free from all obligation, provided the uncertainty is not the result of his own negligence. The assertion that the *æqualitas rei ad rem* demands that to a certain debt there must correspond a certain payment, proves nothing because the equality would again be destroyed by the fact that the debtor might run the risk of paying the debt twice. It

is equally false to argue that under such conditions a man is bound to pay the debt twice, because the doubt in his mind is the result of his own carelessness.[15]

Is a bankrupt who has obtained his discharge after paying his debts in part only, bound to pay in full if he subsequently becomes able to do so? If the creditors have expressly released him from all further obligations, it is evident that he need not pay the balance of his indebtedness. But if they have not so released him, the question is plainly reduced to one of fact, namely, what is the civil law on the point, and what is its effect? In this country several theologians have held that a discharge in bankruptcy does not in conscience free the debtor from liability to pay his debtors in full, if he subsequently becomes able to do so, whereas others (Marc, Kenrick) regard the contrary as a probable opinion. Fr. Slater thinks that "in the United States one who cannot pay his creditors in full must make up the deficiency afterwards if he can, whether he makes a composition with his creditors or goes into the bankruptcy court."[16] Sabetti-Barrett say that, in view of the clause in the Federal Bankruptcy Act of 1898, that "a discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as are due to a tax levied by the United States," and since there is nothing

15 Lehmkuhl, *Casus Consc.*, Vol. I, 3rd ed., n. 754–759, 775–778.—Göpfert, *Moraltheologie*, Vol. II, 7th ed., p. 300.—The American bankruptcy legislation and practice are well summarized by Dr. Albert Sidney Bolles in *Putnam's Handy Law Book for the Layman*, New York, 1921, pp. 31–38, to which we refer the student. A general assignment for the benefit of creditors is an act of bankruptcy. A petition for the appointment of a receiver is not. The U. S. district courts in the several States are courts of bankruptcy and have power to adjudge bankrupt those who have their principal place of business, residence, and domicile within their respective districts, and they have power also over those who have property within their jurisdiction.

16 T. Slater, S. J., *Questions of Moral Theology*, p. 190.

in the wording of the act itself to prove that the discharge should be limited to a mere denial of legal action for the balance of the debt, it is safe to hold, with Father Martin, S.J.,[17] that there is no obligation to pay the residue of the debt, and even if the confessor should hold the opposite opinion as probable, he has no right to impose it upon his bankrupt penitent, but is rather bound to allow him the benefit of the probability.[18] All of which, of course, supposes that the bankruptcy was not fraudulent.

READINGS.—Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., 177 sqq.—St. Alphonsus, *Theol. Mor.*, l. III, n. 696–706 (ed. Gaudé, II, 161 sqq.).—A. Lehmkuhl, S. J., *Theol. Mor.*, Vol. I, pp. 705–712.—H. Noldin, *Summa Theol. Moral.*, Vol. II, pp. 533–541; 452–455.—A. Tanquerey, *Synopsis Theol. Mor. et Past.*, Vol. III, pp. 253–258.—J. B. Ferreres, *Comp. Theol. Mor.*, Vol. I, pp. 560–564.—T. Slater, *A Manual of Moral Theol.*, Vol. I, pp. 437–452.

B. RESTITUTION IN PARTICULAR

ARTICLE I

RESTITUTION FOR DAMAGE CAUSED TO LIFE AND LIMB

Injury done to the life or health of another entails the duty of restitution if the injured party, or in case of death his heirs, have sustained a definite and provable material loss. The wrong-

17 In his American notes to Slater's *Manual of Moral Theol.*, Vol. I, pp. 438–451.

18 Sabetti-Barrett, *Comp. Theol. Mor.*, 27th ed., p. 408.—Cfr. J. O'Mahony, "The Bankruptcy Laws and Conscience," *Irish Theol. Quarterly*, Vol. II (1907), No. 7.

doer is liable for all the damage done by his criminal act, whether mediately or immediately, if it was expressly intended, or was or could have been foreseen, including physicians' fees, hospital expenses, wages or salary lost, a certain amount of smart-money if such is provided for by the civil law, the expenses caused to others by the support of an incapacitated person, and the loss suffered by husband, wife, parents, children, or heirs (*lucrum cessans, damnum emergens*). The heirs of the victim, if he has been killed, have a just claim to be indemnified for whatever he would have been strictly obliged to furnish according to law and what he could have done at the time of his death.[1] Extraordinary funeral expenses must be compensated, for instance, if the slain person was killed away from home and the corpse has to be sent a long distance to be buried in the family tomb. Restitution must also be made to the creditors whom the dead man left unsatisfied, if the killing was the immediate cause of his inability to pay them.[2]

The duty of restitution binds the slayer even if he was in error concerning the identity of the

1 Gury, Vol. I, n. 695–698.

2 Busembaum, *Medulla Theol. Mor.*, l. III, tr. 5, c. 2, dub. 6, a. 3, n. 7: *"Pro expensis funeris nihil restituitur, quia illae aliquando faciendae tandem fuissent, nisi forte occasione illatae necis, v. g. extra patriam maiores fieri oportuerit."*—*Ibid.*, n. 12: *"Etsi probabile sit, deberi etiam restitutionem creditoribus occisi, si quod damnum illis ex ea caede obvenit, contrarium tamen etiam probabile . . . est, quum occisio non sit directe causativa illius damni."*

person slain,[3] but does not extend to unforeseeable consequences of his act.

Injury inflicted in a duel does not entail restitution because there is implied no violation of commutative justice, unless one party was either by force or grave threats compelled by the other to fight, and hence deprived of his liberty.[4]

The judicial condemnation of an innocent man entails restitution on the part of the real culprit only if the latter was the efficient cause in directing suspicion to the former.[5]

To make compensation for *industrial accidents* in dangerous occupations (*e. g.,* in mines or factories, or on railroads) is not a strict duty of justice, but merely one of equity, unless real guilt has been incurred.

The development of modern machinery has created new problems. In most cases of industrial accidents no single individual can be definitely blamed. The cause lies rather in the manner in which modern industry is organized

3 IDEM, *ibid.*, n. 2: *"Qui occidit Caium putans esse Titum, tenetur ad restitutionem, quia actio ista est Caio iniuriosa."*—Cfr. St. Alphonsus, *Theol. Mor.,* l. III, n. 628: *"Negant alii, quia homicidium respectu Caii est mere casuale et involuntarium."* (Ed. Gaudé, II, 106).

4 Cfr. Lehmkuhl, *Theol. Mor.,* Vol. I, pp. 677 sq.

5 Schwane, *Die Gerechtigkeit,* p. 113, note 2: "Caius is planning to kill his friend Titus and while waiting for a favorable opportunity, hears of a public quarrel between Titus and Sempronius, in the course of which the latter declared that he would take the former's life. Thereupon he (Caius) kills Titus secretly. The suspicion falls on Sempronius, who is arrested and executed for the crime. Caius is obliged to make restitution to the wife and children of Titus as well as to those of Sempronius."

and the danger involved in tending to machines. This danger can be reduced by caution on the part of the worker, by various safety appliances, legal precautions, and technical improvements, but it can never be wholly eliminated on account of the imperfection of human nature and especially because of the occasional interference of a higher power (*vis maior*) and accidents (*casus*). In indemnifying the victims of accidents, therefore, it is not enough to look to personal guilt (*culpa*), but a higher principle must be invoked, namely, causal connection. Now since industry as a whole, because of its peculiar character, is the ultimate cause of all industrial accidents, it is bound to make restitution to the injured *in solidum.* In consequence of the new social and political views, which are in conformity with social justice, provision against industrial accidents is now commonly made by *accident insurance,* either public or private,—if private, at the expense of the employer.[6]

Bodily mistreatment or injury which involve loss of the reproductive power are punished with special severity by the civil law, and in many cases are very serious indeed because they affect several persons.

READING.—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., 889 sqq.—St. Alphonsus, *Theol. Mor.,* l. III, n. 626–639. (ed. Gaudé, II, 105 sqq).—J. E. Pruner, *Lehre vom Recht,* Vol. II, pp. 148 sqq.—IDEM, *Kath, Moraltheologie,* Vol. I, 3rd. ed., pp. 538 sqq.—H. Noldin, S. J., *Summa Theol. Mor.,* Vol. II, pp. 490 sqq.—A. Tanquerey, S. S., *Synopsis Theol. Mor. et Past.,* Vol. III, pp. 239 sqq.—A. Lehmkuhl, S. J., *Theol. Mor.,* Vol. I, pp. 675 sqq.

6 Msgr. H. Parkinson, *A Primer of Social Science,* p. 250; J. Biederlack, S. J., *Die soziale Frage,* 7th ed., pp. 237 sqq.

ARTICLE 2

THE DUTY OF RESTITUTION ARISING FROM BROKEN MATRIMONIAL ENGAGEMENTS

Under the new Code of Canon Law a promise of marriage, made by one party or by both, is valid in the court of conscience as well as in the external forum only if made in writing and signed by the parties themselves and by the parish priest, the Ordinary of the diocese, or at least two witnesses.[1]

Such a promise (*sponsalia*), if mutual, imposes on both parties the grave obligation of mutual fidelity and eventual marriage. The time for the latter is left to their own prudent judgment, but it should not be unreasonably protracted.[2]

If one of the betrothed parties has carnal intercourse with a third person during the engagement, this act, according to some moralists, involves a sin against justice and therefore entails the duty of restitution. However, not a few contradict this statement.[3]

§ 3 of Canon 1017 provides that from a promise of marriage, even though it be canonically valid and no just reason excuses, no action is admissable to compel the celebration of marriage,

1 *C. I. C.*, can. 1017, §1.
2 P. Chas. Augustine, O. S. B., *A Commentary on the New Code of Canon Law*, Vol. V, p. 43, St. Louis 1920.
3 *Ibid.*

but an action to recover damages is permitted. This means that if actual damage was done, *e. g.*, if the bride became pregnant, or if expensive preparations were made for the marriage, the party guilty of the breach of promise is liable for an amount sufficient to cover the damage inflicted or the expenses incurred.[4]

These effects follow only such betrothals as are made in the form prescribed by the Code. "No other form of engagement, no matter how pompously celebrated, produces any of these effects, either before the tribunal of the ecclesiastical judge or in the court of conscience. Hence confessors have no right to oblige anyone to any restitution arising from a broken informal engagement, though it goes without saying that a young man who has injured a woman's reputation by undue familiarity is bound in conscience to make restitution, or if no remedy can heal the damage, marry her. This obligation arises not from the betrothal but from the natural law." [5]

A matrimonial engagement may be justly *cancelled* for valid personal reasons, for instance, (a) if one of the parties absents himself from the other for a long time without giving notice; (b) if the moral character of one of the parties has considerably deteriorated, *e. g.*, if the man has become a spendthrift or a roué, or has to

[4] *Ibid.*, p. 44. [5] *Ibid.*, pp. 44 sq.

face an accusation in a criminal court; (c) if a notable physical or mental change has taken place in either or both of the parties, such as mental derangement; (d) if a change of fortune or social condition has occurred on one side. This would be a reason for breaking the engagement by either, but an indemnity should be paid where an engagement is broken on account of an unexpected social or financial rise. Finally, (e) family reasons may render the dissolution of an engagement advisable, *e. g.,* if serious enmity, hatred, dissension, or aversion are apt to result from the contemplated marriage, or there is strong parental opposition and danger of being disinherited.[6]

Justice obliges each party to a marriage engagement to acquaint the other with any defects which would probably prove very injurious in case the marriage took place, for instance, pregnancy, contagious disease, etc.[7]

He who breaks a marriage engagement contracted in canonical form, or conceals a valid reason militating against the marriage, or creates such through his own fault, is bound to repair the injury thereby inflicted upon the innocent party.

Full reparation of such an injury comprises both positive and negative indemnification. The

6 *Ibid.,* pp. 48 sq. 7 *Ibid.,* p. 49.

former consists in paying the expenses incurred in preparing for the contemplated marriage, the latter in repairing any damage arising to the woman, *e.g.,* because of pregnancy or inability to find another husband.

If the bride withdraws from the engagement, it is ordinarily sufficient that the groom be indemnified for any positive losses he may have sustained, because a man can nearly always find another partner. If the groom withdraws, he will in many cases be able to make full reparation of the damage done to the bride by bestowing a dowry upon her.[8]

Even when there is no canonically binding engagement, the betrayed party has a claim to indemnification for the damage sustained. If the woman has been seduced to a gross sin of unchastity under promise of marriage, and was not able to perceive the fraudulent character of the promise, the seducer is in justice bound to marry her, and if he cannot do so, must repair the damage in such a way that she can marry another.[9]

8 H. Noldin, S. J., *Summa Theol. Mor.,* Vol. III, p. 606.

9 St. Thomas, *Summa Theol.,* 3a, Suppl., qu. 46, art. 2, ad 4.—St. Alphonsus, *Theol. Mor.,* l. III, n. 642 sqq. (ed. Gaudé, II, 119 sqq.).—Gury, *Comp. Theol. Mor.,* Vol. I, n. 700: *"Si tamen puella gravida fuisset ex fornicatione, urgendus foret seductor, ut eam duceret, nisi nimia disproportio inter utriusque conditionem intercederet aut aliud gravissimum incommodum obstaret."*—Lehmkuhl, *Theol. Mor.,* Vol. I, n. 997: *"Si puella sub matrimonii promissione sive vera sive ficta ad peccandum inducta est, communissima doctrina tenet, iuvenem obligari ad puellam ducendam, non solum quando gravida evaserit, sed etsi non conceperit: aliter habetur iniusta deceptio, quae solo matrimonio inito reparatur. Attamen haec obligatio corruit, si*

READINGS.—Chas. Augustine, O. S. B., *A Commentary on the New Code of Canon Law,* Vol. III, pp. 36 sqq.—H. Noldin, S. J., *Summa Theol. Mor.,* Vol. III, 12th ed., pp. 597 sqq.—Sporer-Bierbaum, *Theol. Mor.,* Vol. III, 2nd ed., 858 sqq.—F. A. Göpfert, *Moraltheologie,* Vol. II, 7th ed., pp. 306 sqq.

ARTICLE 3

THE DUTY OF RESTITUTION ARISING FROM FORNICATION AND ADULTERY

It is impossible to make restitution for lost bodily integrity (*virginity*) because the damage done is beyond repair. But reparation can and must be made for material injury arising from illicit cohabitation.

1. If both parties have freely committed fornication together, neither has a valid claim to restitution, because *"scienti et volenti non fit iniuria."* [1] If a woman has been dishonored by means of fraud, trickery, violence, or grave threats of cruelty, mutilation or death, she is en-

causae omnino graves contra matrimonium adsunt. . . . Verum alia reparatio non iam propterea excluditur, quod matrimonii ineundi obligatio aut facultas desit."

1 Cfr. H. Busembaum, S. J., *Medulla Theologiae Moralis,* III, tr. 5, c. 2, dub. 6, a. 4: *"Praecise pro sola virginitate non obligat restitutio. Unde si stuprum mansit clam aut non impedivit, quin aeque laute nuberet, ad nihil tenetur stuprator. Item ad nihil tenetur, si defloravit consentientem absque vi, fraude vel promissione matrimoniali, quia non est facta iniuria. Si virginem importunis precibus flexit, nihil tenetur restituere, quia adhuc consensit libere, nisi forte preces tales fuerint ut cum vi et coactione aequiparentur: ut si coniunctae fuerint cum minis vel metu reverentiali, v. g. si fuit illius dominus vel vir magnae auctoritatis."*—Cfr. St. Alphonsus, *Theol. Mor.,* l. IV, n. 642, dub. 2.

titled to full reparation of the damage inflicted upon her reputation, station, or fortune, and eventually to compensation for the injury to her health resulting from ill-treatment or excitement.[2]

A man who has seduced an honorable woman, especially if she was a virgin, is bound under pain of mortal sin to employ all the means at his command to lead her back to the path of virtue. Such means are: advice, warning, a good example, prayer, and, eventually, marriage. If a secret sin of unchastity committed by a woman has become public through the fault of the seducer, the latter must repair the damage resulting to her.[3]

Equity requires that an apology be made to the

2 St. Alphonsus, *Theol. Mor.*, l. III, n. 641: *"Si quis vi, minis aut fraudibus [virginem] violet, hic tenetur tam puellae quam parentibus omnia damna reparare honoris et fortunae. Hinc tenetur talem augere dotem, ut puella aeque bene nubat ac si violata non fuisset. . . . Si autem ipse vellet eam ducere, at puella nuptias respueret, tenetur eam omnino dotare. . . . Et idem dicendum etiam in dubio, an puella fuerit prius vel non ab alio corrupta, quia praesumitur ipsa integra, donec certo oppositum probetur. Item si vir rem habeat cum puella clam corrupta vel cum vidua honestae famae et ex suo iniusto concubitu ipsae famae iacturam faciant; secus vero, si concubitus omnino occultus remaneret, tunc enim ad nihil teneretur."* *Ibid.*, n. 642, dub. 1: *"Quid si virgo iniuste violata postea aeque bene nubat? Respondetur, ad nihil teneri violatorem nisi ante matrimonium per sententiam vel pactum dos fuerit puellae adiudicata, nam alias nil tenetur praestare: non pro violatione virginitatis quae irreparabilis est, nec pro damno, quum nullum secutum sit. . . . Si mulier male tractetur a viro ob cognitum defectum, tenetur stuprator mulieri compensare."*—Cfr. Ex. XXII, 16 sq.; Deut. XXII, 25; Ehrlich, *Randglossen zur hebr. Bibel*, II, 316.

3 St. Alphonsus, *l. c.*: *"Si vir deinde facinus propalando puellam infamaverit, tunc ex iustitia tenetur omne damnum ex infamatione proveniens puellae et parentibus resarcire, ut recte advertunt Laymann et Salmanticenses."*

injured parents, if they are not themselves to blame for the sin of their daughter; but there is no strict obligation to this effect.[4]

a) Restitution is of strict obligation in cases of *criminal assault* or *rape* (*stuprum*), and by this term moralists understand not only an act of violence which the assaulted person was unable to ward off, but in which she was given no other choice but to suffer violation or risk bodily ill-treatment, mutilation, or perhaps even death.

In some dioceses rape is a reserved case subject to canonical penalties.[5]

4 *Ibid.: "Si virgo libere consentiat, commune est, deflorantem nihil teneri ei restituere. Sed dubium primum fit, an eo casu teneatur ille satisfacere iniuriam parentibus puellae. Adest duplex sententia probabilis. Prima negat, . . . Ratio, quia si ipsa puella, quum sit domina sui corporis, nullam irrogat iniuriam patri, si defloration consentit utens iure suo; tanto minus irrogat deflorator. Tantum illa peccabit et consequenter etiam violator contra pietatem patri debitam et etiam contra obedientiam, si de tali crimine expresse prohibitionem a patre habuerit, ut ait Lugo. Secunda vero sententia affirmat. Et idem tenet Divus Thomas (S. Th., 2a 2æ, qu. 154, art. 6, ad 3) qui dicit: "Iniuriam facit [deflorator] patri puellae, unde et ei secundum legem tenetur ad poenam, nimirum ex Dt. xxii, 28 sq., ubi defloratores, si in iudicium adducti fuissent, tenebantur solvere patri puellae 50 siclos. Id tamen, bene advertit divus Antoninus, locum habere tantum post sententiam iudicis. Ceterum praefata secunda sententia, tam puellam quam eius defloratorem dupliciter peccare, nempe contra castitatem et iustitiam; ac teneri deflorantem restituere patri honorem ablatum per aliquod signum honorationis, veniae petitionem aut per aliud simile, nisi praesumatur pater talem nolle satisfactionem. Dubium secundum fit, an violator puellae consentientis restituere teneatur parentibus damnum bonorum ipsis obveniens propter dotem, quam augere debent ad filiam in matrimonio collocandam? Affirmant Azor et Corduba et alii. Sed communissime negant Scotus, Suarez, Sanchez, Lessius, Lugo etc. Ratio, quia sicut puella, quum possit libere nuptias respuere, non facit iniuriam parentibus, si ad illas minus aptam se reddit consentiendo in suam defloration; ita neque iniuriam eis facit deflorator ipsam consentientem violans."* (Ed. Gaudé, II, 116).

5 A. Vermeersch, S. J., *De Castitate*, Bruges, 1919, p. 323. Cfr. *C. I. C.*, can. 2357, §1; 2359, §2.

b) The claim of having been "seduced" does not in itself entitle a woman to restitution. Seduction is not necessarily accomplished in one act or in a single moment in which it would be possible to deprive the will of its freedom. It usually extends over some time, in which reason and conscience have a chance to assert their influence and put a chaste and conscientious woman on her guard. Probably most women who pretend to have been seduced were willing victims.[6] At any rate, in its subtler form, seduction is traceable to the coquetry of the female as much as to the passion of the male.[7] A man may fancy he is seducing a woman when in reality the woman is seducing him. And even when religious motives are given no room for play, an ordinarily good woman can with a little reflection realize that, while dallying with the seducer, she is embarking on a dangerous course and that, if actual "seduction" follows, it will be her own fault as much as the man's.[8]

"That a weak and poorly developed woman should be abused by a strong man against her will is credible," says a medical writer; "but when both are in good health and in the possession of ordinary strength, such a thing is improbable, and a contrary statement deserves no credence unless the circumstances are exceptional. A woman may be attacked and abused against her will by two or more men; . . . but one man unaided is hardly able, under ordinary conditions, to overpower and rape a grown-up, healthy, and fully developed woman who is

6 Gen. XXXIX, 7–18 (Putiphar's wife); cfr. XXXVIII, 13 sqq. Homer, *Odyssey*, I, 55 sqq. (Calypso and Ulysses); *Iliad*, VI, 160 sqq. (Anteia and Bellephoron).—Elbel-Bierbaum, *Theol. Mor.*, Vol. I, 3rd ed., 223 sq. (*Casus non fictus, sed vere factus*).

7 2 Kings XIII, 11–17. (Amnon's rape of Thamar).—Cfr. St. Jerome, *Epist.*, XXII, n. 12 (Migne, *P. L.*, XXII, 401).—Prov. VII, 5–27.

8 Linsenmann, *Moraltheologie*, pp. 612 sq.

in the full possession of her strength and free to use it in offering resistance." [9]

2. If a birth results from an act of fornication to which both parties freely consented, both are equally and *in solidum* bound to rear the child.

a) If the sin was committed through violence, grave fear, trickery or fraud, or if the woman was made incapable of offering resistance by intoxicating liquor or other similar means, or if consent or resistance on her part was morally impossible on account of mental weakness or extreme youth, the guilty aggressor is alone liable for the support and education of the child and, moreover, bound to marry the woman, or at least provide for her and the child to the best of his ability.[10]

When necessary, it is licit to garnishee a portion of the man's wages or salary for the benefit of the woman

9 J. Maschka, *Handbuch der gerichtlichen Medizin,* Vol. III, pp. 136 sq.

10 Aertnys, *Theol. Mor.,* Vol. I, 7th ed., l. III, n. 371: *"Proles si nata fuerit, distinguendum: 1. Si virgo libere consenserit, iure naturae uterque parens tenetur pro rata et in solidum ad impensas educationis, donec proles sibi ipsi providere possit; 2. Si oppressa fuerit, solus stuprator tenetur impensas educationis sustinere; in huius tamen defectu puella supplere debet, quum sit mater prolis, sed ipsa tunc servat actionem contra violatorem suum, qui totum damnum restituere obligatur. Praeterea debent ambo parentes prolem conceptam aut iam natam legati modo tanquam suam agnoscere et per subsequens matrimonium legitimitate donare, ne maneat infamis et hereditate debitaque educatione privetur. Cessat tamen haec obligatio, si grave obstet incommodum aut si puella decepta sive oppressa fuerit, utpote quae ad matrimonium cum violatore suo ineundum non tenetur. Denique pro praxi adverto: Quando stuprator damnum pecunia compensaturus est, expedit ut de quantitate summae cum damnum passis componat summamque una vice solvat, ne forte periculosum commercium continuetur aut debiti solutio omittatur."*—Noldin, II, pp. 494 sqq.

whom he has violated and of her illegitimate child.

If a woman has had voluntary intercourse with two or more men and it is consequently uncertain who is the father of her child, no one is obliged to make restitution, unless the civil law provides otherwise; for when a duty is doubtful, no certain burden may be imposed.[11]

If in case of rape several men have been guilty and there is consequent uncertainty with regard to the paternity of a child, all are obliged to make restitution *pro rata*.[12]

b) The sin of fornication, committed with mutual consent, violates no strict right of the families of the respective participants, but it constitutes a gross violation of the respect and charity due to them. This damage the guilty parties

11 St. Alphonsus, *Theol. Mor.*, l. IV, n. 658: *"Quae sententia spectata ratione et absolute loquendo probabilior est, nemo enim tenetur ad damnum, nisi certo moraliter constet, ipsum fuisse causam damni."*—Cfr. A Lehmkhul, *Theol. Mor.*, Vol. I, 12th ed., n. 997; Idem, *Casus Consc.*, Vol. I, 2nd ed., n. 714 sqq.—Noldin, II, p. 495.

12 Lehmkhul, *Theol. Mor.*, Vol. I, p. 683; Aertnys, *Theol. Mor.*, Vol. I, 7th ed., l. III, n. 376, p. 6: *"Quid si inter duos adulteros, qui eandem feminam cognoverunt, ambigatur utriusnam sit proles? Respondetur: Prima sententia communior docet utrumque ad alimenta teneri pro rata dubii, quia singuli certam iniuriam intulerunt et damnum aliquod, nempe vel prolem illegitimam vel incertitudinem auctoris qui solvere teneretur. Aliunde ex hac incertitudine innocens pati non debet. Secunda sententia probabilior asserit neutrum ad quidquam obligari, quia nemo ad solutionem et restitutionem obligandus est, quamdiu non constet de debito, unde nullus tenetur prolem alere quam suam esse non constat. Neque sufficit actio iniuriosa, sed insuper requiritur damnum ex illa certe secutum. Suadet tamen primae sententiae ratio in duplici casu: 1. Contra secundum adulterum, qui sciens adulterium patratum ab altero advertit se secundo suo adulterio causam fieri incertitudinis, propter quam a primo adultero compensatio exigi nequit; 2. Si ex communi consilio adulterium patrarint. Rarissima erit advertentia et hoc consilium. Praefatum responsum procedit quoque pro fornicatoribus."*

should repair by making an apology and giving satisfaction, which they can do by faithful compliance with their duties. Parents, superiors, or teachers who seduce their subjects to fornication, possibly with a view of pecuniary profit (*lenocinium*), incur the same guilt and responsibility as those who command others to sin (*mandantes*).[13] They are guilty of negative co-operation if they grossly neglect their duty towards their charges.

c) In some countries a woman cannot recover damages if it can be proved that she had sexual intercourse with several men. The admission of this principle (*exceptio plurium*, as it is called), seems a hardship for the mother and her child, and gives unscrupulous men an opportunity to escape responsibility for their sins by causing others to have sexual intercourse with a seduced woman. But experience shows that to exclude this principle would promote blackmail and immorality. If the legal consequence of *exceptio plurium* is admitted, every intelligent girl that commits fornication with one man, knows that she will lose her claims against him if she takes up with another, and thus her will-power is strengthened and she is saved from sinking to lower depths. The illegitimate child will at least have a mother, who, though she may have sinned, is not a professional harlot or a blackmailer who runs after rich men to secure a "father" for her child.

Under the *Code Civil Napoléon* a suit for damages

13 *V. supra*, concerning coöperation in evil.

against the father of an illegitimate child was impossible because search for the father was forbidden.[14]

3. When a child is born of *adulterous intercourse,* the wrong-doers, if they sinned freely, are both bound to provide for the child and make compensation for the loss ensuing to the husband or wife (provided he or she did not consent), and to his or her legitimate offspring.[15] If the crime of an adulteress has remained unknown to her husband, and he is compelled to support the child, unaware that it is not his, though her guilt is grave and she is bound to make adequate restitution, she may nevertheless conceal her crime in order to preserve her good name and the domestic peace,[16] and, under certain circumstances, she has the duty of safeguarding the interests of the adulterine child.[17]

14 Art. 340: *"La récherche de la paternité est interdite."*—Cfr. W. Beringer, *Das uneheliche Kind und seine Mutter,* Metz 1903; A. Bebel, *Die Frau und der Sozialismus,* 37th ed., Stuttgart 1904.

15 St. Alphonsus, *Theol. Mor.,* l. III, n. 651; Gury, *Comp. Theol. Mor.,* Vol. I, n. 702: *"Uterque adulter tenetur in solidum ad omnia damna familiae obvenientia reparanda, si ex utraque parte crimen voluntarium fuerit, quia totum utrique imputandum est. Hinc:* 1. *Omnes sumptus, quos fecit maritus in prole alenda et educanda, restituendi sunt:* 2. *Si filius illegitimus cum legitimis iam haereditatem acceperit, istis pro rata compensatio facienda est."*

16 St. Alphonsus, *Theol. Mor.,* l. III, n. 653 (ed. Gaudé, II, 130).—Gury, *Comp. Theol. Mor.,* Vol. I, n. 703: *"An mulier crimen suum revelare teneatur, si alio modo damnum reparare nequeat? Respondetur negative generatim loquendo. Ratio est:* 1. *Quia communiter haec revelatio fieri nequit sine magno mulieris infamia et saepe sine periculo mortis vel odii perpetui et aliorum gravium malorum;* 2. *Quia etiam tali medio adhibito difficile damnum reparare posset. Excipiunt communiter, si mater sit perditae famae."*

17 Linsenmann, *Moraltheologie,* pp. 613 sq.: "If no other proofs

But she is also bound to make compensation for the damage inflicted upon her husband and legitimate offspring, either from her own means, or if she possesses no property of her own, by increased diligence, economy, and reduction of her personal expenses.[18]

a) If an adulteress conceals her crime *in confessionali* until she is near death, when it is impossible for her to make restitution, she should not be compelled to reveal her sin to her husband, because the reputation of a wife and mother is a more valuable possession for her husband and children than the temporal good of which they will be deprived in consequence of being ignorant of her sin.[19]

b) If a man, by the use of force or serious threats, compels a married woman to commit adultery with him, he is the sole cause of the resulting damage and alone

are given, the child may not, merely because of the testimony of the mother, be denied the right of legitimacy; *pater est, quem nuptiae demonstrant.*"—Cfr. Gury, *Comp. Theol. Mor.*, 1, n. 704: *"An filius teneatur credere matri etiam iuranti eum illegitimum esse? Respondetur negative, quia ex iure et sensu communi nemo tenetur credere uni testi etiam probatissimae fidei. Secus tamen si praeter testimonium matris accederent indicia evidentia, v. g. absentia patris a longo tempore."*—Cfr. St. Alphonsus, *Theol. Mor.*, l. III, n. 654 (ed. Gaudé, II, 132).

18 Gury, *Comp. Theol. Mor.*, I, n. 702: *"Aultera si paraphernalia habeat, ex ipsis restituere debet marito et filiis laesis per donationes manuales, per contractum, testamentum, legata etc. Si non habeat, diligentius familiam administret parciorque sit in sumptibus privatis, laboret diligentius, inquantum status permittit."*

19 C. 9, *de Poenit. et Rem.*, V, 38: *"Sicut mulieri, quae ignorante marito de adulterio prolem suscepit, quamvis id viro suo timeat confiteri, non est poenitentia deneganda, ita nec illi, quae sibi partum supposuit alienum, . . . sed competens satisfactio per discretum sacerdotem ei debet iniungi."*

bound to make restitution and to provide for the support and education of the child.[20] In case there is doubt whether the child belongs to him or to the woman's lawful husband, the adulterer is not obliged to make restitution, for according to the principle, *"Pater est, quem nuptiae demonstrant,"* a child is regarded as the offspring of the mother's lawful husband unless the contrary is proved.[21]

c) If a woman has had adulterous intercourse with two or more men besides her husband, and it is uncertain which of them is the father of her child, none is held to restitution, since the mother is the cause of the uncertainty. But if a conspiracy existed between the men, they are bound to make restitution *in solidum*. If those that came later were aware of the woman's previous relations with others, they are bound to make restitution *pro rata dubii* and *in solidum*.[22]

20 Aertnys, *Theol. Mor.*, Vol. I, 7th ed., l. III, n. 374: *"Quando adulter vi, metu aut fraude consensum mulieris extorsit, tenetur ipse solus totum damnum reparare. Ratio est, quia tunc ipse solus est totius damni causa."*

21 St. Alphonsus, *Theol. Mor.*, l. II, n. 657 (ed. Gaudé, II, 133). —Gury, *Comp. Theol. Mor.*, I, n. 703.—*Code Civil Napoléon*, a. 312: *"L'enfant conçu pendant le mariage a pour père le mari."*—J. Maschka, *Handbuch der gerichtl. Medizin*, III, 4 sqq.

22 Aertnys, *Theologia Moralis*, Vol. I, 7th ed., l. III, n. 376, qu. 6 Lehmkuhl, *Theologia Moralis*, Vol. I, 11th ed., n. 1190: *"Quando plures adulteri ad mulierem accesserunt circa idem tempus generationi aptum, et proles, certo adulterina, cuiusnam sit, nescitur: si qui communi consilio egerint vel tantummodo sciverint sive graviter suspicati fuerint, iam alios esse admissos, puto eos teneri omnes pro rata dubii ad damna marito filiisve legitimis oritura reparanda. Nam omnes posuerunt causam, quae ex se apta est ad prolem certi patris procreandam, aut ad efficiendam incertam et dubiam paternitatem, ideoque ad efficiendam incertitudinem circa eum, a quo damni certi reparationem integram maritus aliique damnificati repetere possint. At hanc incertitudinem efficere, actio iniusta et damnosa est. Ergo ex hac iniustitia, cuius effectum ex ipsa sua actione oriri posse cognoverunt, ad damnum reparandum tenentur: attamen cum eadem iniustitia, perinde ac si de certo auctore constet, non sit, quilibet pro rata tantum damna oritura reparare debet, in solidum non tenetur."*

d) He who commits his illegitimate child to a public *foundling asylum,* is not bound in justice to make restitution of the money expended for its support, because such institutions exist for all children, rich and poor, which are exposed to danger. Since, however, foundling asylums are not intended to relieve wealthy people of the care for their offspring, it is surely a matter of equity that the expenses be repaid in such cases.[23]

e) Adultery is a canonical ground for demanding a separation *a mensa et toro.* The guilty party loses the *ius petendi debitum coniugale,* which may, however, be recovered by express or implied condonation on the part of the innocent party. The least that can be expected of a husband or wife who has been guilty of adultery is that he or she humbly confess his or her sin, ask for forgiveness, and sincerely promise to be faithful in future. Genuine penitence can usually repair the scandal given, at least in its more serious consequences.

READINGS.—Sporer-Bierbaum, *Theol. Mor.,* Vol. II, 2nd ed., 1022 sqq., 146 sqq.—St. Alphonsus, *Theol. Mor.,* l. III, n. 640 (ed. Gaudé, II, 115 sqq.).—H. Noldin, S. J., *Summa Theol. Mor.,* Vol. II, pp. 494 sqq.—A. Tanquerey, *Synopsis Theol. Mor. et Past.,* Vol. III, pp. 242 sqq.—T. Slater, S. J., *A Manual of Moral Theol.,* Vol. I, pp. 416 sq.—A. Lehmkuhl, S. J., *Theol. Mor.,* Vol. II, pp. 680 sqq.

ARTICLE 4

RESTITUTION FOR DAMAGE DONE TO THE PROPERTY OF OTHERS

1. All ill-gotten gains must be restored and all unjustly inflicted damage must be repaired in

23 Cfr. St. Alphonsus, *Theol. Mor.,* l. III, n. 656 (ed. Gaudé, II, 133); Gury, *Comp. Theol. Mor.,* I, n. 705.

accordance with the rules laid down in a previous Section of this treatise.[1]

To appropriate another's property in extreme necessity, in order to save oneself or others from death, for instance, in time of famine, is not a violation of justice and hence does not impose the duty of restitution. Life is more than food, and the body more than the raiment.[2] This teaching is acknowledged even by the civil law.

a) The so-called *domestic thefts* (*furta domestica*), committed by children against their parents, by wives against their husbands, etc., do not entail restitution unless the stolen sum is considerable. It is assumed that there is a sort of communism in family life, and parents and husbands do not take such things seriously.

b) Thefts committed by servants call for a distinction. If the stolen goods were ordinary eatables and consumed, *i. e.*, not given away or sold, no restitution is involved. But if money was stolen, or valuables ordinarily kept under lock and key, or extraordinary and expensive delicacies, the damage must be repaired. If servants appropriate things belonging to their masters or employers on the plea that they were not properly paid for their services (occult compensation) they are obliged to make restitution.[3]

1 *V. supra* pp. 379 sqq.
2 Matth. VI, 25.
3 On occult compensation see *supra*, pp. 366 sq., 418 sqq.—Cfr. the propositions condemned under Innocent XI, n. 37.

c) He who sets fire to his own property, or to the property of others, and collects the insurance, is responsible to the insurance company for the resulting loss. Since in cases of restitution arising from fire the party to whom compensation is to be made is as a rule *dominus incertus,* the money may be turned over to pious causes.[4]

2. There can be no doubt that the *unjust appropriation of public property, e. g.,* wood from a communal forest, game or fish caught without a permit, profits made from smuggling or de-

4 A. Lehmkuhl, S. J., *Theol. Mor.,* Vol. I, 11th ed., n. 1359: "*Incendiarius sive suam sive alienam rem destruxit, restituere debet. Sed si quaeritur, cui restitutio fieri debeat, practica quaedam difficultas esse potest, si quando difficulter ad veros dominos res perveniat. Quare dico: 1. Si institutum assecurationis publicum est, i. e., ad ipsam rempublicam vel provinciam pertinens, restitutio fieri potest pauperibus vel causis publicis. 2. Si institutum assecurationis privatum est, proxime et per se huic instituto restitutio debetur. Quodsi hoc ipsum institutum se suaque damna ex parte iterum assecuravit, ita ut assecuratio secundi generis (reassecuratio,* re-insurance) *exsistat; sane huic pars restitutionis debetur. 3. Nihilominus complures rationes sunt, cur plerumque etiam loco instituti privati pauperes vel causae piae eligi possint, quibus fiat restitutio. Nimirum: a) Saepe in societatibus assecurationis tot 'actiones' possident, ut summa restitutionis, quamvis tota gravis, tamen in singulis distributa pro nullo domino singulari sit gravis materia.* b) *Reassecuratio fieri solet, idque pro maxima parte rei assecuratae, sed fieri solet apud plura et diversa instituta, neque sciri potest, apud quod vel quae ista res damnificata, quae causam dedit restitutionis debitae, reassecurata fuerit, nisi haec ipsa res instituto principalis assecurationis indicetur: quod sane periculis plenum esse potest.* c) *Demum non tam sunt assecuratores, quam potius assecurati seu totus horum numerus, qui re ipsa ex voluntariis incendiis damnum patiuntur. Nam assecuratores in determinando pretio quotannis solvendo certe rationem habent omnium incendiorum, quae re vera accidere solent, etiam voluntariorum; alioquin deberet annuum pretium diminui, ne sit iusto maius; ergo coguntur assecurati ad solvendum annuum pretium maius propter ipsa incendia voluntaria, ita ut ab incendiariis iniustum patiantur damnum. Verum horum, qui sic damnificantur, tantus est numerus, ut propter eorum multitudinem restitutio censeri possit devolvi ad pauperes causasve pias.*"

frauding the customs, violates commutative justice and therefore carries with it the duty of restitution. The reason is because in a well-ordered community such acts mean an unjust enrichment of a few at the expense of the many.[5] Restitution in such cases must be made, if it can be done without serious inconvenience, not to the poor, but to the public treasury of the community upon which the injury was inflicted.

Tax and customs collectors who have neglected to collect the revenues required by law, are obliged to make restitution if the neglect involved any moral guilt on their part.

a) To *bribe officials* in order to cause them to violate their oath of office, is to co-operate in injustice and imposes the duty of making restitution in a subsidiary manner, *i. e.,* if the bribed official does not make good the loss, the briber must do so.

If an official suffers personal loss through fraud committed against the commonwealth, that loss must be repaired by the defrauder.

b) He who unjustly evades the duty of serving his country when drafted into the army or

5 *Cat. Rom.,* P. III, c. 8, qu. 10: *"In hoc crimine rapacitatis includuntur, qui, quae ecclesiae praesidibus et magistratibus debentur, vectigalia, tributa, decimas et reliqua huius generis non dissolvunt vel intervertunt et ad se transferunt."*—Cfr. St. Alphonsus de' Liguori, *Theol. Mor.,* l. III, n. 617 (ed. Gaudé, II, 99); Gury, *Comp. Theol. Mor.,* Vol. I, n. 707–717; J. Schwane, *Die Gerechtigkeit,* pp. 182 sqq.; A. Wagner, *Die sittlichen Grundsätze bezüglich der Steuerpflicht,* pp. 50 sqq., 73 sqq.

navy, commits an act of injustice towards the State, but is not obliged to make restitution to a substitute who may be drafted in his place, because the latter does not lose a strict right, but merely an accidental privilege. But if one directly employs unjust means to force another to serve in his stead, he owes that other restitution.[6]

c) For those who evade the payment of *taxes,* the duty of making restitution is quite clear in some cases, but not so clear in others.

Officials who co-operate in this misdemeanor in spite of their oath of office, are plainly bound to make restitution. The same is true of those who unjustly influence officials to defraud the public treasury by means of bribes, promises etc.; they are liable to subsidiary restitution of the damage done, that is, they must make good the damage if the guilty officials do not do so. Again, the case is quite clear if one has paid his taxes in counterfeit money or with a worthless check; he must repair the loss thus caused to the public treasury or to the individual official who may have been compelled to make good the deficiency out of his own pocket.

6 Gury, *Comp. Theol. Mor.,* Vol. I, n. 718 sqq.; cfr. Lehmkuhl, *Theol. Mor.,* Vol. I, 11th ed., n. 1175 sqq.; Gennari, *Consultazioni,* Vol. I, 2nd ed., 127 sqq.; L. v. Ruymbeke, *"Peut-on se soustraire à la loi en matière de conscription militaire?"* in *La Nouvelle Revue Théologique,* Tournai, 1905, pp. 371 sqq.; Noldin, *Summa Theol. Mor.,* Vol. II, pp. 498 sq.

d) As regards *non-payment* of *taxes* by those legally obliged to pay them, theologians differ concerning the duty of restitution involved.

The *sententia communissima et probabilior* of the older school was that the duty of paying taxes is based on commutative justice and therefore involves the obligation of making full restitution. Some held that this duty obliged only on condition that the taxes imposed were really necessary for the public welfare and that they were assessed with strict impartiality. If this were not the case, it would not be necessary (*post factum*) to impose restitution as a strict duty upon the citizen who by fraudulent means had escaped paying his assessed share. Those who took this view regarded such cases as instances of occult compensation.

Another school of moralists bases the duty of paying taxes simply upon legal justice (*iustitia legalis*) and holds that, as there is no question of commutative justice involved, there can be no strict duty of restitution. Some who take this view think that the duty of restitution exists, but only so long as the misdemeanor is not legally outlawed. A third group regards all, or nearly all, civil tax laws as purely penal (*leges mere poenales*), *i. e.*, as obliging merely under a legal penalty, but not in conscience. Several representatives of this group hold that imposition by the State of heavy fines for tax defraudations is a sufficient compensation for the losses suffered by others.[7]

Dr. Ryan rightly says that the application of the principles of Catholic Moral Theology to the subject of taxa-

7 See the *Kirchenlexikon*, Vol. I, 2nd ed., 85 sq.; Hamm, Zur *Grundlegung und Geschichte der Steuermoral*, pp. 125 sqq., 309 sqq.; Schindler, *Lehrbuch der Moraltheologie*, Vol. II, ii, 800 sqq.

tion *in praxi* is "not entirely simple, owing to the complexity and injustice of our tax system and the very large proportion of persons who habitually understate their taxable property. The principal form of taxation, at least in local and State jurisdictions, is what is known as the *general property tax*. Not only does this directly violate the ethical principle of taxation in proportion to ability to pay, as determined by comparative sacrifices, but it is apportioned and administered most inequitably, and it is evaded in wholesale fashion. In the words of Professor Seligman, 'the general property tax, as actually administered, is beyond doubt one of the worst taxes known in the civilized world.' [8] In these circumstances, the conscientious citizen cannot be required to do more than pay that proportion of the full amount which is paid by the majority. If the prevailing understatement of taxable property amounts to twenty-five per cent., the citizen who pays on more than three-fourths of his goods contributes more than his share.[9] This general rule of action may properly be applied to other kinds of taxes where evasion is considerable and notorious. Of course, the conscientious citizen will not take advantage of it until he is morally certain of the facts. . . .

"As a rule, the citizen is not bound to pay taxes until the amount due from him has been defined by the fiscal authorities. When he is legally required to furnish a statement of his property, he is obliged by legal justice to comply. Is he obliged to volunteer such information? For example, is a person morally bound to inform the authorities that his income is sufficiently large to subject him to the *income tax?* If he does not give this spontaneous information he will escape. The income tax law re-

8 *Essays in Taxation*, N. Y. 1895, p. 61.

9 Cfr. Tanquerey, *De Iust.*, n. 597.

quires the citizens to make such a statement, and penalizes them for failure to do so when their evasion of the tax has been detected. It seems clear, therefore, that the citizen is bound by legal justice to provide a statement of his taxable property, not only in response to an official requisition, but sometimes in the absence of such a requisition." [10]

e) *Tariff duties* are probably purely penal, "not only because of the common popular conviction, but because they are saturated with economic and ethical inequalities." [11]

READINGS.—H. Noldin, S. J., *Summa Theol. Mor.,* Vol. II, pp. 477 sqq., 331 sqq.—A. Tanquerey, S. S., *Synopsis Theol. Mor. et Pastor.,* Vol. III, pp. 249 sqq.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 611 sqq.—J. A. Ryan, *Distributive Justice,* pp. 101 sqq.—F. Suarez, *De Legibus,* l. V, c. 13–18.—Th. Meyer, S. J., *Inst. Iuris Nat.,* Vol. II, pp. 654 sqq.—A. Lehmkuhl, S. J., *Theol. Mor.,* Vol. I, pp. 670 sqq.—V. Cathrein, S.J., *Moralphilosophie,* Vol. II, 5th ed., pp. 656 sqq.

ARTICLE 5

RESTITUTION FOR DAMAGE DONE IN THE CHOICE OF A VOCATION OR THE PURSUIT OF AN OCCUPATION

1. If one is under a grave obligation to help another to embrace a certain occupation or profession, and neglects this obligation, though he is able to fulfil it, with the result that the other

10 Ryan, *The State and the Church,* pp. 268 sq.

11 *Ibid.,* p. 269.

remains without a calling, he is obliged to make restitution. This duty often falls upon parents or their representatives in regard to children.

The compensation made can, of course, be only a partial one because the victim of such neglect will never be able to enjoy the authority and influence which the contemplated calling or profession would have given him. But that which every man obtains through his calling, namely, work and a livelihood, must be given to such a neglected person. A mere annuity without some sort of occupation would be a poor compensation for a neglected training, for "if any man will not work, neither let him eat." [1] If the neglected person decides of his own accord to engage in some occupation that does not correspond to his station in life, those guilty of allowing or necessitating this ill choice will be in duty bound to repair the injury done him as best they can, for instance, by improving his condition, by endowing him with money or property, though the last-mentioned manner of restitution can never be a full equivalent for a lost professional training.

If a child is forced by his parents or guardians to choose a vocation or profession for which he has neither aptitude nor inclination, and for which he has had no chance to obtain the necessary training, such parents or guardians are

1 2 Thess, III, 10; see this *Handbook*, Vol. III, pp. 130 sq.

obliged to make restitution, though adequate compensation in such cases is manifestly impossible; wherein men have failed, God alone can repair.[2]

2. He who for an unjust motive keeps another away from an office or position for which he has duly prepared himself, and which he has a right to occupy, no matter what the means chosen, is obliged to make restitution for the injury inflicted,—an injury, by the way, often not limited to the past, but extending into the future.

If a man is unable to hold his position in consequence of the opposition of others, a distinction must be made as to the means employed by the latter; if these means do not involve a violation of commutative justice, the civil law does not demand compensation, on the principle that *"Qui suo iure utitur, neminem laedit."* Christian equity, however, requires of each and every man that he "let others live."

"All things therefore, whatsoever you would that men should do to you, do you also to them." [3]

READINGS.—St. Alphonsus, *Theol. Mor.*, l. III, n. 582 sqq.; l. IV, n. 106 sqq. (ed. Gaudé, II, 73 sqq., 522 sqq.).—Jocham, *Moraltheologie*, Vol. III, 406 sqq.—A. Tanquerey, S.S., *Synopsis Theol. Mor.*, Vol. III, pp. 248 sq.

2 Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 104, art. 5; *Conc. Trid.*, Sess. XXV, *De Reg. Monial.*, c. 18.

3 Matth. VII, 12.

ARTICLE 6

RESTITUTION FOR SPIRITUAL DAMAGE

1. He who intentionally, or in a manner which he could have foreseen, injures his neighbor mentally, for instance, by giving alcohol to a child, or habit-forming drugs to an adult, or by fraud, deception, lying, or other unjust means, or deprives him of some knowledge or skill which he needs in his profession or occupation, is bound in justice to make restitution. This applies particularly to those who, *ex officio* or *ex contractu,* are obliged to instruct others, but neglect to secure the necessary qualifications or fail to offer their pupils sufficient opportunities to acquire the knowledge or skill which they need. If the injury thus inflicted extends into the future, this circumstance must be taken into account in making restitution.[1]

1 Gury, *Comp. Theol. Mor.,* Vol. I, n. 694: 1. *"Qui alium privavit memoria, ratione etc. per venenum, philtrum, tenetur ex iustitia reparare id omne, quod in damno iniuste et efficaciter causato reparabile est. 2. Qui fraude impedivit, ne alter scientiam, artem . . . addiscat vel alios doceat, tenetur fraudem depellere et damna temporalia, quae ex ea suborta sunt, reparare. 3. Qui ex officio docere debet artem vel scientiam, tenetur errores corrigere, si quosdam admiserit et sint alicuius momenti. Eadem obligatio ipsi quoque incumbit, si probabilia improbabilibus ex incuria vel levitate permiscuerit. 4. Si quis gratuito et sine obligatione pacti vel officii male doceret ex neglegentia vel ignorantia seclusis fraude et dolo, ad reparationem non teneretur."* —Noldin, *Summa Theol. Mor.,* II, 4th ed., n. 455: *"Qui alium privat usu rationis, ad restitutionem non tenetur ob ipsum hoc damnum spirituale illatum, quia in eodem ordine reparari nequit, tenetur autem reparare damnum temporale, si quod passus est is, qui usu rationis privatus est."*

2. He who unjustly injures another in his supernatural possessions (*bona supernaturalia*), for instance, by purposely leading him into error in matters of faith or morals, or by seducing him to sin, or, what is still worse, robbing him of his most precious gifts, faith and hope, or who otherwise gives grave scandal, is obliged under pain of mortal sin to repair the damage thus inflicted so far as lies in his power. Means to this end are: recantation of the lies told, refutation of the errors inculcated, admonition and exhortation, good example, prayer, and, if scandal has been given (*e. g.,* through offensive writings), public reparation.

It is furthermore necessary to repair any temporal damage that may have been caused to others by the spreading of false reports, the commission of a sin, or the giving of scandal. This duty of restitution binds even in cases where the offender had no direct intention of causing spiritual damage to others by word, deed or omission, and extends to all the evil consequences of the offence committed,—both those that were directly intended and those that might have been foreseen under the circumstances of the case.[2]

2 Gury, *Comp. Theol. Mor.,* Vol. I, n. 693: "1. *Qui vi, mendacio, fraude, metu iniusto induxit aliquem in peccatum lethale, tenetur sub mortali ex iustitia ad damni reparationem vim vel seductionem tollendo errorem manifestando. Qui autem sine vi vel fraude, sed tantum consilio induxit aliquem ad peccandum lethaliter, tenetur quidem ad consilium illud ex caritate revocandum, non vero ex*

If *spiritual damage* has been caused without the employment of means *per se* unjust,—for instance, by request, admonition or counsel,—the seducer is bound, at least *ex caritate,* under pain of mortal sin, to repair the damage inflicted and to undo its consequences to the best of his ability.

He who, by force or fraud, restrains another from entering a *religious institute* (order or congregation), or causes him to leave the same, is bound in strict justice to desist and make restitution of the damage inflicted, both to the misguided individual and to the monastery which he deserted. He who, without a just cause, deters another from joining a religious order or congregation, even though he employ no unjust means, commits a grievous sin against charity, but is not bound to make restitution because no offence against justice is involved.

A religious who at an election refuses to vote for the admission of a novice, sins and is obliged to make restitution, unless a sufficient cause existed for rejecting the novice, *e. g.,* disease or lack of talent, and there was consequently reason to fear that the candidate might become a burden to the order.[3]

iustitia, quia scienti et volenti non fit iniuria. 2. Qui dolo induxit alium in errorem praesertim practicum, ex quo damnum grave illi oriri possit in materia morum, ex iustitia tenetur reparare damna, quae inde proveniunt et omni conatu eum ab errore removere. Idem de errore speculativo circa praecipuos fidei articulos tenendum est."

3 Cfr. F. A. Göpfert, *Moraltheologie,* Vol. II, 6th ed., 301.—Gury, *Comp. Theol. Mor.,* I, n. 693, 3:

Priests or teachers who are bound by their office to instruct others in the truth, must carefully correct any false instruction which they may have given, for, as Fr. Slater says, it is better to leave people in ignorance than to imbue their minds with falsehood.[4]

READINGS.—Sporer-Bierbaum, *Theol. Mor.*, Vol. II, 2nd ed., tr. 5, n. 117–149.—J. P. Gury, S. J., *Comp. Theol. Mor.*, Vol. I, n. 693–694.—H. Noldin, S. J., *Summa Theol. Mor.*, Vol. II, pp. 488 sq.

"Quisquis enim ius habet, ne iniuste a consecutione aut possessione tanti boni impediatur vel abstrahatur."

4 Slater, *A Manual of Moral Theology*, I, 414 (notes to Part II, Ch. I).

PART II

MAN'S DUTIES TO HIS FELLOW-MEN AS A WHOLE, OR TO SOCIETY

CHAPTER I

DEFINITION AND DIVISION OF SOCIETY

1. DEFINITION.—Man is not a lone individual, but a *social* being.[1] That is evident not only from the innate attraction he feels for his fellowmen, but likewise, and in a particular manner, from his physical and intellectual dependence upon others. In the words of Jesus, the son of Sirach, "all flesh consorts with the like of itself, and every man shall associate himself to his like." [2]

"Man's natural instinct," says Pope Leo XIII in his famous encyclical on the Christian Constitution of States, "moves him to live in civil

1 *ζῶον πολιτικόν, animal rationale et sociale.*—Cfr. St. Thomas, *Summa Theol.*, 1a, qu. 96, art. 4; 2a 2ae, qu. 109, art. 3, ad 1; qu. 114, art. 2, ad 1; qu. 129, art. 6, ad 1; 3a, qu. 65, art. 1. The term *animal rationale et sociale* in Scholastic parlance means a rational and social being, not animal. Animal is *brutum. Animal* in Latin is a generic term comprising *homo* and *brutum.*

2 *"Omnis homo simili sui sociabitur."*—Ecclus. XIII, 20.

society, for he cannot, if dwelling apart, provide himself with the necessary requirements of life, nor procure the means of developing his mental and moral faculties. Hence it is divinely ordained that he should lead his life—be it family, social or civil—with his fellowmen, amongst whom alone his several wants can be adequately supplied." [3]

Another proof that men are destined to consort with their like is the gift of language, by which they can communicate to one another their thoughts, desires, and aspirations. Finally mutual love also has its part in the constitution of society.

The principal requirements of a society are: (a) multiplicity of individuals, (b) a common end, and (c) a stable union for the attainment of that end. A single individual can not constitute a society. It is only when several persons come together and unite their aims for the attainment of a common object that a society is established. Since rational beings alone are capable of forming such a union, which involves rights and duties on the part of each member, the term

3 Encyclical *"Immortale Dei,"* Nov. 1, 1885: *"Insitum homini naturâ est, ut in civili societate vivat: is enim necessarium vitae cultum et paratum itemque ingenii atque animi perfectionem quam in solitudine adipisci non possit, provisum divinitus est, ut ad coniunctionem congregationemque humanam nasceretur, quum domesticam tum etiam civilem, quae suppeditare vitae sufficientiam perfectam sola potest."* (*The Pope and the People*, p. 73.)

society is inapplicable to irrational brutes, no matter how many analogies may be found among them reminding us of human society, as in a colony of bees or ants.[4]

An essential requirement flowing from the very nature of society is *authority, i. e.,* the right of certain members to compel others to do or to omit certain things in relation to the common purpose. In view of its object, authority can be but one, and must always remain the same, so that it becomes extinguished only when the society itself ceases to exist or undergoes an essential change. Being a moral person with well-defined objects and scope, every society is the bearer of rights and duties, towards other societies as well as towards its own members. Hence a society may be more comprehensively defined as *the permanent union of a number of free beings who, under the direction of an authority, strive by common effort to achieve a common purpose.*

2. Division.—Societies are distinguished from one another in purpose, origin, and extent.

a) In regard to its *purpose* a society may *be perfect* or *imperfect,* according as its object is to procure for its members all the things they need for their welfare, and it possesses all the means

4 V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 4th ed., p. 377; M. Cronin, *The Science of Ethics,* Vol. II, pp. 385 sqq.

necessary for this purpose within itself, or according as it aims only at the one or other necessity, and consequently requires to be supplemented in its efforts by other societies. The *State* (*civitas sive communitas civilis*) is a perfect society because it possesses all the means required for the attainment of its objects and is self-sufficient within the natural order. The *Church,* too, is a perfect society, because it is equipped by its Divine Founder with all the means necessary to attain its end. The family (*familia domestica*), on the other hand, consisting of father, mother, and children, is an imperfect society, for the reason that, though it aims at providing its members with all they need, it cannot fully attain this purpose without the aid of other social organisms of a wider scope, namely, State and Church.[5]

b) In respect to its origin a society is either natural (necessary) or free, according as its

5 St. Thomas, *Comment. in Polit.,* I, l. i: *"Quum omnis communicatio omnium hominum ordinetur ad aliquid necessarium vitae, illa erit perfecta communitas, quae ordinatur ad hoc quod homo habeat sufficienter quidquid est necessarium ad vitam; talis autem communitas est civitas."*—Cfr. V. Cathrein, S. J., *Phil. Mor.,* n. 433: *"Ex duplici ratione societas potest dici perfecta: 1. propterea quia ordinatur ad perfectam sufficientiam vitae humanae et sibi ad hunc finem sufficit, et hoc sensu idem est ac societas intrinsece et extrinsece completa; 2. propterea quia media ad finem suum assequendum necessaria in se et per se (actu vel virtute) possidet et ab aliis societatibus saltem directe non dependet: hoc sensu et civitas et Ecclesia sunt societates perfectae, reliquae omnes sunt imperfectae."*—Cfr. M. Cronin, *The Science of Ethics,* Vol. II, pp. 388 sq.

peculiar character is based upon the very nature of man or depends upon free choice, exercised within the limits of justice and order.

c) In regard to extent, a society is either *general* or *particular,* according as it includes all men or only one race, community, or body of men. The only general society in this sense is that which comprises the whole race, human society, *i. e.,* all men, in as far as all have the same final end, namely, to glorify God and work out their eternal salvation, and in so far as they are all subject to one supreme Legislator and bound together by mutual rights and duties. This general society—"society" *par excellence*—is divided into a large number of particular societies, of which the basic groups are the family and the State.[6]

The respective relations to State and Church give rise to the further distinction between *public* and *private so-*

[6] Is. XLVIII, 11; Prov. XVI, 4; Gal. VI, 2; Jas. IV, 12.—*Conc. Vatic.,* Sess. III, c. 1.—St. Augustine, *De Bono Coniugali,* c. 1: *"Quoniam unusquisque homo humani generis pars est, et sociale quiddam est humana natura, magnumque habet et naturale bonum, vim quoque amicitae; ob hoc ex uno Deus voluit omnes homines condere, ut in sua societate non sola similitudine generis, sed etiam cognationis vinculo tenerentur. Prima itaque naturalis humanae societatis copula vir et uxor est. Quos nec ipsos singulos condidit Deus et tanquam alienigenas iunxit, sed alteram creavit ex altero, signans etiam vim coniunctionis in latere, unde illa detracta formata est* (Gn ii. 21–22). *Lateribus enim sibi iunguntur, qui pariter ambulant et pariter quo ambulant intuentur. Consequens est connexio societatis in filiis, qui unus honestus fructus est, non coniunctionis maris et feminae, sed concubitus. Poterat enim esse in utroque sexu, etiam sine tali commixtione, alterius regentis, alterius obsequentis amicalis quaedam et germana coniunctio."* (Migne, *P. L.,* XL, 373).

cieties. Public societies are those which are acknowledged as juridical persons by the authority, either of State or Church, and enjoy definite public rights. All others are private.

READINGS.—Theo. Meyer, *Inst. Iuris Naturalis,* Vol. I, S.J., n. 347 sqq.—V. Cathrein, S.J., *Moralphilosophie,* Vol. II, 5th ed., pp. 388 sqq.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 385 sqq.—J. E. Ross, C.S.P., *Christian Ethics,* pp. 190 sqq.—C. Antoine, S.J., *Cours d'Économie Sociale,* Intr. and Ch. I of Part I.—T. Slater, S.J., *Questions of Moral Theology,* pp. 191 sqq.

CHAPTER II

THE CHRISTIAN FAMILY

SECTION 1

THE MUTUAL DUTIES OF THE MARRIED

Husband and wife together constitute a society, *i. e.,* a stable union of persons, entered into for a common purpose, *i. e.,* a complete enduring personal partnership for the continuance of the race.

From this definition may be deduced the mutual duties of husband and wife. These duties are partly natural, partly intellectual, moral, and religious. They are based upon the *threefold character* of Matrimony as a natural union, a moral society, and a sacramental association for the salvation of its members, and designed to enable man to accomplish the *threefold purpose* of marriage, namely, the propagation of the human race, mutual assistance, and mutual sanctification.[1]

Though the *sedatio concupiscentiae* and the

1 Gen. I, 27 sq.; II, 18; Matth. XIX, 4–6; 1 Cor. VII, 2–5; 1 Tim. II, 15; 1 Pet. III, 7.

propagation of the species are true purposes of Matrimony, yet its highest or principal object is the undivided community of life led by husband and wife.[2] Hence we may distinguish matrimonial duties of the natural or lower, and of the spiritual or higher order.[3]

The qualities required of the married are thus described by the famous pulpit jester Abraham a Santa Clara: "Married people must have good teeth, for they are obliged to chew and swallow many disagreeable things. They must have good fingers, for it is often necessary that they peer through them. They must have good feet, for the shoe will often pinch them. They must have a good stomach, for they have to digest many troubles. They must be very devout, for they have to carry the cross every day in the year."

2 1 Cor. VII, 2.—St. Augustine, *De Bono Coniug.*, c. 5: *"Ad hoc nuptiae sunt, ut illa concupiscentia redacta ad legitimum vinculum non deformis et dissoluta fluitaret habens de se ipsa irrefrenabilem carnis infirmitatem, de nuptiis autem indissolubilem fidei societatem de se ipsa progressum immoderate coeundi, de nuptiis modum caste procreandi. Etsi enim turpe est libidinose uti velle marito, honestum est tamen nolle misceri nisi marito et non parere nisi de marito."*—*Ibid.*, c. 3: *"Bonum coniugii, quod etiam Dominus in Evangelio confirmavit, non solum quia prohibuit dimittere uxorem nisi ex causa fornicationis* (Mt. xix, 9), *sed etiam quia venit invitatus ad nuptias* (Io. ii, 2), *cur sit bonum merito quaeritur. Quod mihi non videtur propter solam filiorum procreationem, sed propter ipsam etiam naturalem in diverso sexu societatem. Alioquin non iam diceretur coniugium in sensibus, praesertim si vel amisissent filios vel minime genuissent. Nunc vero in bono licet annoso coniugio etsi emarcuit ardor aetatis inter masculum et feminam, viget tamen ordo caritatis inter maritum et uxorem, quia quanto meliores sunt, tanto maturius a commixtione carnis suae pari consensu se continere coeperunt, non ut necessitatis esset postea non posse quod vellent, sed ut laudis esset primum noluisse, quod possent."* (Migne, *P. L.*, XL, 377, 375).

3 Gen. II, 24; Matth. XIX, 5; 1 Cor. VII, 4; Eph. V, 25–29; Tit. II, 4.

I. The principal duties of the married in the natural order are cohabitation and the *debitum coniugale.*

1. The duty of living together (*communio mensae sive cohabitatio*) is imposed by the common life to which both parties are vowed.[4] By the law of nature the husband is the head of the family and determines its place and manner of living. If for some good reason he decides to change his domicile, the wife is bound to follow him, unless she is physically or morally unable to do so. If he is temporarily forced to live apart from his wife, he should obtain her consent, without which he should not act except in case of necessity, and even then only provided the separation does not bring in its wake the *periculum incontinentiae.* For a short absence the husband does not need the consent of his wife, but it would undoubtedly be an injustice to her if he remained away even for a brief while without informing her of the reason.[5]

4 Matth. XIX, 5; 1 Cor. VII, 5.—Cfr. St. Alphonsus, *Theologia Mor.,* l. VI, n. 977.—Gury, *Comp. Theol. Mor.,* Vol. I, n. 388.

5 St. Alphonsus, *Theol. Mor.,* l. VI, n. 939: *"Certum est coniuges teneri ex obligatione iustitiae ad cohabitandum in eadem domo, mensa ac toro. Hinc infertur, neminem coniugum posse alio discedere altero invito ad longum tempus, nisi adsint iustae causae, nempe ob bonum publicum vel ad alendam aut tuendam familiam, vel ad vitandum damnum ab inimicis. Dixit autem Bossius cum Toleto et Sayro, quod si vir diu deberet alibi manere, teneretur, si commode potest, uxorem eo adducere, ut secum cohabitet. . . . Vir potest suscipere brevem peregrinationem devotionis causa etiam invita uxore; hoc tamen non potest uxor sine consensu viri, quum ipsa sit subiecta illius voluntati et non deceat statum mulierum peregrinari. Ex*

If the matrimonial contract stipulates that the husband shall not change his domicile without the wife's consent, or if he becomes a vagabond after marriage, and the wife was unaware of this propensity before she married him, she is not bound to accompany him. The fact that the wife's dowry has not yet been paid, does not justify the husband in refusing to cohabit with her, for the duty of cohabitation flows from the marriage contract. Arbitrary separation, secret escape, or malicious abandonment of one party by the other, is a grievous injustice.

If married people live apart, it is usually an indication that their spiritual union is not very close. The wife's place is in her husband's house, and she inflicts an injury upon him if she goes away to live with her parents or other relatives.

If a man wishes to emigrate to a foreign country, he should not do so against the wishes of his wife. Even though she can give no other reason for opposing the plan than a strong love of home, this sentiment should be respected. The man who without important reasons disregards such a noble sentiment in his wife, cannot expect her to become more closely attached to him if he disregards her wishes. Only when the motives inspiring the husband are very weighty, can the wife

mutuo autem consensu bene possunt coniuges invicem separari, modo absit periculum incontinentiae et nocumentum prolis educandae, ex illo Apostoli (1 Cor vii, 5): *Nolite fraudare invicem, nisi forte consensu ad tempus, ut vacetis orationi, et iterum revertimini in idipsum, ne tentet vos satanas propter incontinentiam vestram.*"—Cfr. Reuter-Lehmkuhl, *Neoconfessarius*, P. II, c. 4, n. p. 151.

be expected to acquiesce, even at the sacrifice of her natural sentiments.[6]

Neither party may leave the other except on account of notorious adultery or if further cohabitation has become impossible without serious danger to faith, morals, or honor. In that event the facts should be reported to the ecclesiastical authorities and permission obtained for a *separatio a mensa et toro.*

If one party has committed adultery, and the fact is established beyond doubt, the innocent partner is justified in denying to the guilty the *debitum coniugale* and other signs of matrimonial affection, and if he or she intends to apply for an ecclesiastical decree of separation, the *debitum* must be denied, because otherwise the right to a separation would be forfeited.

Even when there are good reasons for demanding a separation the innocent party should consider well whether it would not be better, for the sake of the temporal and eternal welfare of himself or herself and of the children, to condone the crime and continue to cohabit with the guilty partner rather than get a separation.

For a husband or wife to live apart from the other without sufficient canonical reasons is a mortal sin and renders the party *per se* unworthy of absolution. Under present conditions, however, the Church is no longer able to prevent such unauthorized separations and therefore tolerates them. Hence if married persons living apart are convinced that they are right, if their separation does not give scandal, and if admonitions and warnings are likely to prove ineffective, they may be left unmolested.[7]

[6] Linsenmann, *Moraltheologie,* p. 629.

[7] J. E. Pruner, *Kath. Moraltheologie,* Vol. I, 3rd ed., p. 335; cfr. Lehmkuhl, *Theol. Mor.,* Vol. II, n. 934 sqq.

2. The *communio tori* or *ius et debitum coniugale* also flows from the nature of Matrimony.

a) Matrimonial cohabitation in the narrower sense of the term is not sinful, but on the contrary, the right to demand, and the duty to render it, are clearly taught by St. Paul, when he says: "Let the husband render to his wife her due, and likewise the wife to her husband. The wife hath not control of her own body [in this matter], but the husband; the husband likewise hath not control of his own body, but the wife. Deprive not one another [of your due], unless it be by consent for a time, that you may devote yourself to prayer and [then] be together again, lest Satan use your lack of self-control to tempt you." [8]

8 1 Cor. VII, 3 sq.—St. Alphonsus, *Theol. Mor.*, l. VI, n. 938: *"Etsi coniuges nulla lege obligentur ad usum matrimonii, tenentur tamen per se ex iustitia sibi reddere debitum, si alter ab altero expresse vel tacite (verecundia scilicet obstante) petat. Ratio prioris est, quia non tenentur uti suo iure. Ratio posterioris sequitur ex natura contractus mutui. Neuter tenetur per se loquendo ad petendum debitum, etsi per accidens aliquando teneatur vel ex caritate, v. g. ad advertendum periculum incontinentiae imminens coniugi, vel iustitia legali, eo quod salus publica periclitetur nisi proles nascatur."*—Gury, *Comp. Theol. Mor.*, II, n. 687: *"Coniugale debitum dicitur communis ea coniugum actio, quae generationi necessaria est quaeque a summo rerum omnium Provisore ad humanam sobolem propagandam est ordinata. Haec autem actio sita est in carnali copula, qua vir ac femina unum quasi corpus et una caro efficiuntur. Eiusmodi actus vocatur debitum ab Apostolo; est enim id quod sibi mutuo debent coniuges."* —*Ibid.*, n. 688: *"Actus coniugalis per se honestus omnino est et licitus inter veros coniuges, modo debito fine exerceatur; est enim unicum medium ab ipso naturae conditore statutum atque ordinatum ad legitimam humani generis propagationem. Fines qui actum huiusmodi honestum reddunt, sunt:* 1. *Prolis generatio, quae inter praecipuos matrimonii fines numeratur;* 2. *Satisfactio obligationis ex iure compartis enatae;* 3. *Vitatio incontinentiae tum in se tum in comparte;* 4. *Desiderium honestae amicitiae fovendae vel conciliandae, coniugalis affectus pate-*

It follows that the married have the right, within the limits set by God, to demand the *debitum coniugale* of each other, and to this right corresponds the strict duty of rendering the *debitum,* unless there are good reasons justifying a refusal. Hence both parties have equal rights and duties in regard to matrimonial cohabitation and, generally speaking, are bound under pain of mortal sin to render each other the *debitum.* This obligation is especially grave if either party is exposed to the danger of incontinence.

As a rule the *debitum coniugale* or the *redditio debiti* may not be denied *sub gravi* if the other party expressly demands it, or the demand may be reasonably presumed. Unwarranted denial of this right is apt to disturb the peace and may easily become a source of marital infidelity.[9]

faciendi vel promovendi."—*Ibid.*, n. 696: *"Nulla datur per se obligatio petendi debitum coniugale. Ratio est, quia neuter coniux iure suo uti tenetur et uterque illud remittere potest. Per accidens tamen dari potest obligatio petendi ex caritate vel alia virtute, praesertim in viro, v. g. si iudicet compartem versari in periculo incontinentiae ob verecundiam petendi, aut si petitio necessaria sit gratia fovendae aut restaurandae amicitiae coniugalis etc."*—Wilhelm, *Das Eheleben,* 98 sqq.

9 1 Cor. VII, 7.—St. Thomas, *Summa Theol.,* 3a, Suppl., qu. 63, art. 2: *"Petere debitum contingit dupliciter: Uno modo expresse, ut quando verbis invicem petunt; alio modo interpretative, quando scilicet vir percipit per aliqua signa quod uxor vellet sibi debitum reddi, sed propter verecundiam tacet; et ita etiamsi non expresse petat verbis debitum, tamen vir tenetur reddere, quando aliqua signa in uxore apparent reddendi debiti."* —*Ibid.*, art. 9, ad 1: *"Hoc est propter lubricum carnis divinitus ordinatum, ut semper petenti debitum reddatur, ne aliqua occasio peccandi detur."*—St. Alphonsus, *Theol. Mor.*, l. VI, n. 940: *"Peccat mortaliter, qui coniugi serio et instanter petenti debitum negat,*

The duty of rendering the *debitum* ceases if the party demanding it is not in the full possession of his or her senses (*e. g.,* insane or totally drunk), if he or she suffers from an infectious disease or has forfeited the *ius petendi debitum coniugale* by adultery.[10]

b) The coniugal act (*usus matrimonii*) is licit only if prompted by reasonable and proper motives, such as the desire for children (*generatio prolis*), mutual affection (*caritas mutua*), or the wish to avoid sin (*evitatio peccati*), and provided it takes place within the limits prescribed by the moral law, or, as theologians are wont to put it, *"salva personae incolumitate et salvâ debitâ honestate."* Though in its nature licit, nay laudable and where the conditions for supernatural merit are present, even meritorius, the *actus coniugalis* may become illicit and sinful *per ac-*

quia est res gravis et debetur ex iustitia. Intellege, nisi petens precibus aut alia ratione honesta averti possit et petitio non sit immoderata (nam si saepe petenti semel verbis negetur citra periculum incontinentiae, videtur esse tantum veniale ob levitatem materiae et aliquando, si nimis immoderate et iusto saepius petat, nullum) nec sit alia iusta causa negandi. Iustam autem, secluso periculo incontinentiae utriusque, esse censet M. Perez, si plures nascantur filii, quam possint alere."

10 St. Alphonsus, *Theol. Mor.,* l. VI, n. 948, 950–953; Gury, II, n. 696: *"Cessat obligatio reddendi debitum cessante iure illud exigendi; ius autem in sequentibus praecipue casibus perimitur, scil.: 1. Si unus coniugum adulterium commiserit, quia frangenti fidem fides non amplius debetur; 2. Si petens usu rationis careat, quia petitio eius non est humana; 3. Si reddens possit rationabiliter timere damnum vel periculum grave sanitatis, quia non censentur coniuges se obligasse ad debitum cum tanto incommodo reddendum; 4. Si petens ob commissum incestum cum consanguineis alterius aut aliam ob causam ius petendi amiserit."*

cidens, i. e., through the circumstances accompanying it.[11]

a) If it entails grave danger to life or health for one or both of the parties, the act is illicit and cannot even be justified by the *periculum incontinentiae,* because the latter may be obviated by other means, *e. g.,* prayer and mortification. When there is immediate danger to an

11 St. Augustine, *De Genesi ad Lit.,* l. IX, c. 7, n. 12: *"Id, quod bonum habent nuptiae, et quo bonae sunt nuptiae, peccatum esse nunquam potest. Hoc autem tripartitum est: fides, proles, sacramentum. In fide attenditur ne praeter vinculum coniugale cum altera vel altero concumbatur; in prole, ut amanter suscipiatur, benigne nutriatur, religiose educetur; in sacramento autem, ut coniugium non separetur et dimissus aut dimissa nec causa prolis alteri coniungatur. Haec est tamquam regula nuptiarum, qua vel naturae decoratur fecunditas vel incontinentiae regitur pravitas."* (Migne, *P. L.,* XXXIV, 397).—Idem, *De Bono Coniug.,* c. 6, n. 6: *"Coniugalis concubitus generandi gratia non habet culpam; concupiscentiae vero satiandae, sed tamen cum coniuge, propter thori fidem venialem habet culpam; adulterium vero sive fornicatio lethalem habet culpam. Ac per hoc melior est quidem ab omni concubitu continentia, quam vel ipse matrimonialis concubitus, qui fit causa gignendi."*—*Ibid.,* c. 7, n. 6: *"Sed quia illa continentia meriti amplioris est, reddere vero debitum coniugale nullius est criminis, exigere autem ultra generandi necessitatem culpae venialis, fornicari vero vel moechari puniendi criminis, cavere debet caritas coniugalis, ne dum sibi quaerit unde amplius honoretur, coniugi faciat unde damnetur."* (*P. L.,* 377 sq.)—Peter Lombard, *Sent.,* l. IV, dist. 31, c. 5.—St. Thomas, *S. Theol.,* 3a, Suppl., qu. 49, art. 5: *"Sicut bona matrimonii secundum quod sunt in habitu, faciunt matrimonium honestum et sanctum, ita etiam secundum quod sint in actuali intentione, faciunt actum matrimonii honestum, quantum ad illa duo bona matrimonii, quae ipsius actum respiciunt. Unde quando coniuges conveniunt causa prolis procreandae, vel ut sibi invicem debitum reddant, quod ad fidem pertinet, totaliter excusantur a peccato."*—J. Nider († 1438), *Praeceptorium Div. Legis,* pr. 6, c. 4: *"Est igitur concubitus in matrimonio meritorius et virtutis actus, quae dicitur castitas coniugalis, quando fit solum causa prolis procreandae et religiose educandae ad ampliandum cultum divinum. Et si tunc adsunt aliae debitae circumstantiae, est actus virtutis, quae dicitur religio."*—Cfr. Denifle, *Luther und Luthertum,* Vol. I, 2nd ed. pp. 238 sqq.

already conceived fetus, *e. g.,* through abortion, the *concubitus matrimonialis* is forbidden, because it would inflict upon the child an injustice which not even the danger of incontinence could excuse. If the procreation of an imperfect offspring is to be apprehended from the act, the principle of St. Thomas applies: *"Quamvis generetur infirma proles, tamen melius est ei sic esse, quam penitus non esse."* [12] In such a case no right is violated by matrimonial intercourse because the *proles concipienda* as yet possesses no rights. Besides, the fact of conception and the harm apprehended are both uncertain.

It should be observed, however, that harm caused to a child quite often means injury to the family and to the State, for instance, through idiocy. For this reason prospective parents are under a grave obligation to avoid whatever might lead to the birth of exceptionally abnormal offspring. Broadly speaking, married couples have not the right to bring into the world children whom they are unable to support, for they would thereby inflict a grievous damage upon society.

It should be remembered that a *fetus* has the rights of a human being. Hence the married are not permitted to have sexual intercourse if it is apt to injure an existing fetus and the injury is not compensated by a corresponding advantage. The risk of incontinence can be offset by other means. But to forbid marital inter-

12 St. Thomas, *Summa Theol.,* 3a, Suppl., qu. 64, art. 1, ad 4.

course when the danger of abortion is but slight, would be imposing an intolerable burden. Aside from the danger of abortion, all other possible injuries to be apprehended from marital intercourse may be compensated for by such reasonable ends as the fostering of mutual affection, avoiding incontinence, etc.[13]

In cases of mental derangement on either side, the sexual intercourse of the married is subject to certain restraints imposed by regard for the welfare of the offspring. The children of a psychopathic or neurotic couple will not easily escape a hereditary taint. In cases of extreme and permanent psychic affection some authors hold that sexual intercourse is forbidden. When the trouble is less deep-seated and merely temporary, it will be advisable to await the return of a more normal condition, if this can be done without irritating the patient too much.[14]

β) Married people may not, under pain of mortal sin, gratify the sexual instinct outside the limits established by nature, especially are they forbidden to prevent conception or limit offspring except by mutual abstention.[15] A hus-

13 F. A. Göpfert, *Moraltheologie*, Vol. III, 5th ed., p. 431.

14 Stohr-Kannamüller, *Handbuch der Pastoralmedizin*, 5th ed., pp. 507 sqq.

15 "*Dominus quidam nobilis, ceterum bene instructus, solet coitum licet contradicente coniuge abrumpere, ne sequatur proles. Interrogatus cur ita agat, respondet sibi hoc fuisse permissum ab aliquo confessario docto. Redargutus dicit se id facare ob duplicem rationem: 1. Ne prole numerosiore status familiae deiciatur; 2. Ne uxor iteratâ graviditate nimium defatigetur, Reiectus porro a parocho, qui nolentem ab hoc modo agendi recedere non absolvit, ubique parochum suum ignarum praedicat et superbum, utpote qui aliorum sententiam corrigat et onera importabilia poenitentibus imponat. S. Poenitentiaria d. d. 13. Nov. 1901 respondit: Parochum, de quo in casu, recte gessisse, atque absolvi non posse poenitentem, qui abstinere nolit ab huiusmodi agendi ratione, quae est purus onanismus.*"—Cfr. L. Freund, *Kindersegen und Kindersorgen*, 2nd ed., Donauwörth 1907; D. J. Cardinal Mercier, *The*

band who practices *onanism* cannot be absolved unless he shows extraordinary signs of contrition and a firm purpose of amendment. The wife should try to prevent onanistic intercourse. If she does not succeed, she should withhold interior consent from the sin committed by the *vir onanista* and manifest her disapproval of his conduct by earnest protests and admonitions. For the rest she may remain passive, because the act is legitimate in its inception and becomes sinful only through subsequent abuse on the part of the husband. If, however, it is impossible for the wife to render the *debitum coniugale in ordine naturae,* because the husband uses mechanical appliances (*condoms, pessaries*) or other means to prevent conception, ("contraceptives," as they are called), she is strictly bound to deny him the *debitum coniugale,* because in that case the act is intrinsically bad from the very beginning and therefore cooperation would be illicit and a mortal sin except when rendered under the influence of dire compulsion.[16]

Duties of Conjugal Life, London C. T. S., pp. 14 sqq.

16 St. Alphonsus, *Theol. Mor.,* l. VI, n. 927: *"Ex dictis casibus consequenter resolvitur, licitum esse uti matrimonio prolis causâ, etsi haec non necessario debeat intendi, dum exercetur, dummodo positive non impediatur, immo etiam aliquando simplici affectu licite excludatur, v. g. a paupere, ne nimium prolibus gravetur."—Ibid.,* n. 954: *"Quaeres, an aliquando liceat impedire prolis generationem? Respondetur, Possunt quidem coniuges ex gravi causa aliquid facere, ex quo per accidens sequatur effusio seminis; peccant tamen, si in usu matrimonii vel post usum faciant aliquid, quo impediatur conceptio aut semen conceptum reiiciatur. Ratio prioris est, quia non impeditur generatio, ne indirecte quidem, sed tantum permittitur, ut*

A woman who directly or indirectly (*e. g.,* by complaining) induces her husband to employ unnatural means to prevent conception, commits a mortal sin.

It goes without saying that the medicinal or artificial sterilization of the *semen virile post copulam* is illicit.[17]

It is permissible to limit sexual intercourse to the period during which conception does not ordinarily take place.[18]

The *excision of the uterus* or *ovaries,* if performed for the sole purpose of preventing conception, is sinful, even in cases where conception might involve danger to the woman's life.

If the husband demands the *debitum coniugale* while intoxicated, the wife, because of the danger to the offspring, is justified in denying him; nay, she is in duty bound to refuse if there is direct danger of abortion.[19]

non fiat, quod licet ex causa rationabili. Ratio posterioris est, quia agunt contra fidem et finem principalem matrimonii. Unde tales non excusat paupertas imminens aut periculum ex partu."—Gury, *Comp. Theol. Mor.,* II, n. 702–705.—Lehmkuhl, *Casus Consc.,* Vol. I, 3rd ed., n. 548–552.—Jos. Antonelli, *Medicina Pastoralis,* Vol. II, 3rd ed., pp. 152 sqq., 476 sqq.

17 Except in cases of rape; Lehmkuhl, *Theol. Mor.,* Vol. I, n. 1013; cfr. Aertnys, *Theol. Mor.,* Vol. I, 7th ed., l. III, n. 192, qu. 2.

18 *S. Poenit.,* decree of June 16, 1880.—M. D. Nardi, *De Sanctitate Matrimonii Vindicata contra Onanismum,* 3rd ed., Rome 1907.—C. Capellmann, *Fakultative Sterilität ohne Verletzung der Sittengesetze,* 13th ed., Aix-la-Chapelle, 1896, pp. 15 sqq.—A decision of the Holy Office, March 24, 1897, forbade the artificial fecundation of women (see Antonelli, *Medicina Past.,* Vol. II, 4th ed., pp. 534 sqq.).

19 Stohr-Kannamüller, *Handbuch der Pastoralmedizin,* 5th ed., p. 507.

γ) Married people in the nature of things enjoy great freedom in those actions which are directed towards the *concubitus coniugalis.*[20] But the *usus matrimonii* is not, as many seem to think, a permit for the unlimited gratification of the passions. It is, on the contrary, designed as a medicine and protection against inordinate concupiscence and must, therefore, always be chaste and decent.[21] To indulge in it merely and solely for pleasure, *i. e.,* to the positive exclusion of every

20 St. Alphonsus, *Theol. Mor.,* l. VI, n. 932: *"Quaeres, an et quando liceant tactus, aspectus et verba turpia inter coniuges. Respondetur: Tales actus per se iis licent, quia cui licitus est finis, etiam licent media, et cui licet consummatio, etiam licet inchoatio. Unde licite talibus naturam excitent ad copulam. Quod si vero separatim et sine ordine ad copulam, v. g. voluptatis causa tantum fiant, sunt venialia peccata, eo quod ratione status, qui illos actus cohonestat, habeant ius ad illos. Nisi tamen, ut saepe contingit, sint coniuncti cum periculo pollutionis aut coniuges habeant votum castitatis, tunc enim sunt mortalia."*—Gury, *Comp. Theol. Mor.,* Vol. II, n. 700 sq.

21 Tob. IV, 13; VI, 16 sq., 22. 1 Cor. VII, 29; Tit. II, 5. —St. Jerome, *Adv. Iovinian.,* l. I, n. 49: *"Sapiens vir iudicio debet amare coniugem, non affectu. Reget impetus voluptatis nec praeceps feratur in coitum. Nihil est foedius quam uxorem amare quasi adulteram. . . . Doctissimi viri vox est, pudicitiam imprimis esse retinendam, qua amissa omnis virtus ruit. In hac muliebrium virtutum principatus est. Haec pauperem commendat, divitem extollit, deformem redimit, exornat pulchram; bene meretur de maioribus, quorum sanguinem furtiva sobole non vitiat, bene de liberis, quibus nec de matre erubescendum nec de patre dubitandum est, bene imprimis de se, quam a contumelia externi corporis vindicat. . . . Multa sunt quae praeclara ingenia nobilitent. Mulieris virtus proprie pudicitia est."* (Migne, *P. L.,* XXIII, 281 sq.).—St. Augustine, *De Bono Coniug.,* c. 11, n. 12: *"Decus coniugale est castitas procreandi et reddendi carnalis debiti fides."* (*P. L.,* XL, 382). Idem, *Serm.,* n. 9 (al. 96 *de tempore*), c. 9, n. 12: *"Multae custodiae faciunt feminam castiorem, virum castum faciat ipsa virilitas. Nam ideo mulieri maior custodia, quia maior infirmitas. Illa erubescit viro, tu non erubescis Christo? Tu liberior, quia fortior: quia facile vincis, ideo tibi commissus es. Super illam et diligentia viri et terror legum et consuetudo morum et verecundia maior; et Deus super te, tantum Deus."* (*P. L.,* XXXVIII, 84).

other legitimate end, would consequently be sinful, for that pleasure is intended by nature as a means to an end, namely, the procreation of offspring, and must not be raised to the rank of an end in itself.[22]

According to Thomas R. *Malthus* (+ 1834) population, when unchecked, always increases in a geometrical ratio, whereas the food supply increases only in an arithmetical ratio, in other words, "while the primitive agricultural community increases from two to sixteen, the food which their labor produces only increases from two to eight. Thus a time must sooner or later arrive when the population has outrun the means of subsistence, and its further increase is limited by actual starvation." The so-called *Malthusian law* has long since been disproved, but this fact does not hinder thousands of presumably educated persons from regarding its fundamental thesis as a sure conclusion of science.[23] Christian economists have proved on a strictly scientific basis that Malthusianism is wrong.[24] "With the increase in population," says Dr. Linsenmann, "there grows not only the power of productivity inherent in human labor, but also, in consequence of advancing civilization, the productiveness of the

22 *Prop. damn. sub Innoc. XI,* n. 9: *"Opus coniugii ob solam voluptatem exercitum omni penitus caret culpa ac defectu veniali."* (Denzinger-Bannwart, n. 1026).

23 A. M. Carr-Saunders, *The Population Problem,* London, 1922; H. G. Sutherland, M. D., *Birth Control,* London, 1922, pp. 1 sqq.

24 H. G. Sutherland, *Birth Control,* London 1922, *passim.*—H. Pesch, S.J., *Lehrbuch der Nationalökonomie,* Vol. II, pp. 587 sqq.—V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 132 sqq.—Idem, *Der Sozialismus,* 9th ed., pp. 392 sqq. (Engl. tr. by V. Gettelmann, S. J.).—F. Keller, *Bevölkerungspolitik und christliche Moral,* Freiburg 1905.—S. de Plauzoles, *La Maternité et la Défense Nationale contre la Dépopulation,* Paris 1909, pp. 119 sqq.

soil, because it is more intensely cultivated, and the progress of the science of economics enables men to make better use of the gifts of nature. . . . The theory of voluntary self-restraint, moreover, misses its aim. If this self-restraint is to be truly moral, rather than a cause of grave moral aberrations and social evils (prostitution), it presupposes a moral strength which can be expected least of those who ought to be the first to exercise it. The man who possesses enough strength of character to practice this self-control, will not 'breed proletarians,' but is competent to establish and support a home of his own and to rear his children as useful members of society. It would not be better, but rather worse, for society if the best and morally most perfect families would produce fewer children in order not to deprive the offspring of the homeless proletarians of their sustenance. . . . When self-restraint is really moral and based upon mutual consent, it may be justified by the motive not to have more children than can be properly taken care of, in connection with other motives. But because of its dangers it should be recommended only with the greatest caution." [25]

Malthus, who was a parson of the Anglican Church and a conservative in politics, recommended abstinence from sexual intercourse on moral grounds only, and hence it is wrong to designate the modern theory of "birth control" as *"Neo-Malthusianism."* In direct opposition to Malthus's teaching the Malthusian League in England advises early marriage combined with artificial birth control.[26] There can be no doubt that

25 F. X. Linsenmann, *Lehrbuch der Moraltheol.*, pp. 633 sq.

26 "Although their policy is thus in flat contradiction to the policy of Malthus," says Dr. Sutherland (*op. cit.*, p. 3 sq.), "there are two things common to both. Each is based on the same fallacy, and the aim of both is wide of the mark. Indeed, the Neo-Malthusian, like

the honest citizen who marries and rears a large family of healthy children serves his country more effectively than the bachelor who engages in speculation regarding population figures.

There is a *duty of moderation and continence* which binds all, even the married, according to the individual character of their relationship, and cannot therefore be regulated by a general law,—a duty to take care of one's health and that of one's partner, which finds expression in the ancient ecclesiastical admonition to the married to abstain from sexual intercourse at certain seasons of the year as a work of penance. That no positive law to this effect has come down to our time does not prove that the duty of moderation no longer binds married people. They should practice moderation for moral, religious, and hygienic reasons. The admonition of the Roman Catechism is still timely: "As all blessings are to be obtained from God by holy prayer, the faithful should be taught to abstain at times from marital intercourse in order to devote themselves to prayer and supplication to God. By practicing this religious continence, according to the proper and holy injunction of our Fathers, they will find the blessings of marriage augmented by a daily increasing accumulation of divine grace; and living in the pursuit and practice of piety, they will not only spend this life tranquilly and placidly, but will also rest on the true and firm hope, which 'confoundeth not' (Rom.

Malthus, has 'a mist of speculation over his facts, a vapor of fact over his ideas.' Moreover, the path of the Malthusian League, although at first glance an easy way out of many human difficulties, is in reality the broad road along which a man or a nation travels to destruction; and as guides the Neo-Malthusians are utterly unsafe, since they argue from (a) false premises to (b) false deductions." —Cfr. Aertnys, *Theol. Mor.*, Vol. II, 7th ed., l. VI, n. 493; B. Mosso, *De Frustratione Finis Matrimonii* in the *Pastor Bonus*, Treves 1893, pp. 376 sqq.

v, 5), of attaining, through the goodness of God, life eternal." [27]

c) Intimately connected with the *debitum coniugale* is the duty of *fidelity* which the married owe to one another (*fides matrimonialis*). This duty is a postulate of nature, imposed by the purpose of Matrimony as well as by the fact that Christian marriage is a symbol of Christ's indissoluble and exclusive union with His Church.[28] Every gratification of the sexual instinct outside of Matrimony, nay even the voluntary desire for it, is a mortal sin (*adulterium*), doubly grave if the real or coveted accomplice is a married person. The specific sin of adultery is committed also if one party has illicit sexual intercourse with the consent of the other, because neither husband nor wife can abolish the matrimonial relation.[29]

27 *Catech. Rom.*, P. II, c. 8, qu. 34.—Cfr. St. Thomas, *Summa Theol.*, 3a, Suppl., qu. 64, art. 6–9.

28 Gen. II, 24; Matth. XIX, 5; 1 Cor. VII, 4; Eph. V, 25 sqq.; Heb. XIII, 4.—*Catech. Rom.*, P. II, c. 8, qu. 24: *"Fides . . . est alterum matrimonii bonum, non ille virtutis habitus quo imbuimur, quum baptismum percipimus, sed fidelitas quaedam qua mutuo vir uxori et uxor viro ita se obstringit, ut alter alteri sui corporis potestatem tradat sanctumque illud coniugii foedus numquam se violaturum pollicetur."* —St. Augustine, *De Bono Coniug.*, c. 4: *"Quae [fides] in rebus etiam corporeis et abiectis magnum animi bonum est, et ideo eam saluti quoque corporali, qua etiam vita nostra continetur, certum est debere praeponi. Etsi enim exigua palea prae multo auro pene res nulla est, fides tamen, quum in negotio paleae sicut in auro sincere servatur, non ideo minor est, quia in re minore servatur."* (Migne, *P. L.*, XL, 376).

29 *Prop. damn. sub Innoc. XI*, n. 50: *"Copula cum coniugata consentiente marito non est adulterium ideoque sufficit in confessione dicere, se esse fornicatum."* (Denzinger-Bannwart, n. 1067).

Though, so far as the duty of mutual fidelity is concerned, there is no difference between man and wife, and adultery is equally sinful for both, in regard to the *bonum fidei* as well as the *bonum sacramenti,* this crime may be aggravated by uncertainty regarding the paternity of a resulting child.[30]

Adultery is one of the most pernicious of crimes, for it not only involves a grievous injustice to the innocent spouse, but violates the most sacred bond of society, destroys the peace and happiness of numberless families, promotes perjury, child-murder, and other heinous crimes; and hence we need not wonder at the terrible punishments leveled against it.[31]

Adultery is usually preceded by a mental estrangement between husband and wife, and by undue affection for a third party. Where this occurs, it is evident that husband and wife were not what they should have been to each other, namely, true soul-mates and boon companions, and this is often the fault of the party who poses as the innocent one after the catastrophe. Lack of expressions of sincere affection and signs of indifference are usually the first indications of an estrangement.

30 *V. supra,* pp. 438 sq., 440, 442. Cfr. Holweck, *Die kirchlichen Strafgesetze,* p. 265.

31 Ecclus. XXIII, 21 sqq.; Ez. XXII, 11 sqq.; 1 Cor. VI, 9; Heb. XIII, 4.—St. Jerome, *Adv. Iovinian.,* l. I, n. 49: *"Captivitatis nulla maior calamitas est, quam ad alienam trahi."* (Migne, *P. L.,* XXIII, 282).—Idem, *Epist.,* 22, n. 12: *"David . . . postquam deambulans super tectum domus suae Bethsabee captus est nuditate, adulterio iunxit homicidium."* (*P. L.,* XXII, 401).

They are followed by the destruction of mutual confidence and jealousy. *Jealousy* may be a sin, namely, when it nourishes suspicion; but in most instances it is caused by the coldness of the other partner, who claims rights, but forgets that he has corresponding duties to fulfil.[32]

II. Prominent among the duties of the higher order which elevate and ennoble married life, are mutual love and the unity and indissolubility of the marriage bond.

1. The principal duty of the married is *mutual love* (*amor mutuus*). The love which induced them to contract Matrimony should remain with them till death. St. Paul says: "Husbands, love your wives, as Christ also loved the Church and gave himself up for her sake . . . Even thus ought husbands to love their wives as their own bodies. He that loveth his own wife loveth himself. Surely no man hateth his own flesh, nay, he doth nourish and cherish it, even as Christ the Church; because we are members of his body, of his flesh and of his bones. For this shall man leave father and mother, and shall cleave to his wife, and the two shall come to be one flesh. The mystery here is great—I mean in reference to Christ and the Church. However, let each of you, also, love his wife even as himself; and let the wife reverence her husband." [33]

32 Linsenmann, *Moraltheologie*, p. 634.

33 Eph. V, 28–33; cfr. Tit. II, 4.—Rive-Umberg, S. J., *Die Ehe*, 2nd ed., Ratisbon 1921, pp. 312 sqq.

This mutual love (*unio cordium*), which should be so strong that neither party will prefer his parents or children to the other except *in extrema necessitate,*[34] is a highly important factor in marital life, first, because it preserves domestic concord, and especially the sacred blessing of mutual fidelity; second, because it guarantees mutual assistance and aid in the material, moral, and religious necessities of life, and third, because it secures the divinely-established subjection of the wife to the authority of her husband. For although husband and wife stand in a most intimate mutual relationship, and possess the same rights over each other in regard to the *bonum fidei,* yet the husband is the natural head of the family, and the wife owes him reverence and obedience in all matters pertaining to domestic government. From this duty of obedience it does not, however, follow that the husband may treat his wife as a servant or slave, for she is his companion and best friend, to whom he owes reverence and love.[35]

34 St. Alphonsus, *Theol. Mor.,* l. VI, n. 939, dub. 2: *"Notandum, quod in extrema necessitate prius subveniendum sit parentibus qui diligendi sunt ratione principii quam coniugi, et prius etiam filiis, quum ipsi sint pars parentis. In necessitate vero gravi prius succurrendum coniugi quam parentibus et filiis, quia quoad domesticam administrationem maior est coniunctio inter coniuges, quum ipsi sint una caro."*

35 Gen. II, 20; III, 12, 16; Eph. V, 22–25, 28; Col. III, 18 sq.; Tit. II, 4 sq.; 1 Pet. III, 1.—*Cat. Rom.,* P. II, c. 8, qu. 26 sq.—St. Ambrose, *Epist.,* 63, n. 107: *"Mulier viro deferat, non serviat; regendam se praebeat, non coercendam. Indigna est coniugio, quae digna est iurgio. Vir quoque uxo-*

The sin of marital infidelity differs specifically from all other violations of charity. Voluntary aversion or enmity among married people easily becomes a mortal sin, both *per se* and because of the scandal arising therefrom and the evil consequences it may entail for the whole family.

One of the worst enemies of marital happiness is that blasé indifference to the simple joys of life which so often leads to coldness and neglect. When true love vanishes, its place is but too often taken by passion.

The severest character test for the married is *childlessness*. Not many husbands can say to their sterile wives what Elcana, the father of Samuel, said to Anna: "Why weepest thou? and why dost thou not eat? And why dost thou afflict thy heart? Am I not better to thee than ten children?" [36] And yet childless couples might learn from this Old Testament story, not only how to console each other, but also that God can render a barren womb fertile in answer to pious prayers and a vow.[37] Unfortunately many childless marriages are barren through the fault of the husbands, who render their wives sterile by infecting them with loathsome diseases, usually contracted from prostitutes.

rem tamquam gubernator dirigat, tamquam consortem vitae honorificet, participet ut cohaeredem gratiae." (Migne, *P. L.*, XVI, 1218). —Leo XIII, Encycl. "*Arcanum divinae sapientiae,*" Feb. 10, 1880: "*Vir est familiae princeps et caput mulieris; quae tamen, quia caro est de carne illius et os de ossibus eius, subiciatur pareatque viro in morem non ancillae, sed sociae, ut scilicet oboedientiae praestitae nec honestas nec dignitas absit. In eo autem qui praeest, et in hac quae paret, quum imaginem uterque referant alter Christi, alter ecclesiae, divina caritas esto perpetua moderatrix officii.*"—Cfr. J. P. Gury, *Comp. Theol. Mor.*, I, n. 389–391.

[36] 1 Kings I, 8.

[37] Linsenmann, *Lehrb. der Moraltheol.*, pp. 635 sq.—Cfr. Gen. XV, 2 sqq.; XVIII, 10 sqq.; XXI, 1 sqq.; Judg. XIII, 2 sq.; 1 Kings I, 19 sq.; Luke I, 36 sq.

2. The *unity* of marriage (*unitas matrimonii*), flows directly from the spiritual and moral nature of Matrimony.

a) That polyandry (plurality of husbands) is opposed to the social order is evident from the fact that there is no room under that system for paternal law and authority. Polyandry is not so much a means for the multiplication of offspring as for indulgence in lust.

Polygamy (plurality of wives) does not necessarily and completely prevent the propagation of the race,[38] yet it is unnatural and forbidden, being opposed to the unity of marriage, and consequently more or less incompatible with the equality which it demands between husband and wife. One inevitable consequence of the inequality ensuing from polygamy is the subjection of the wife to the husband; instead of a helpmeet, she

38 *Conc. Trid.*, Sess. XXIV, can. 2: *"Si quis dixerit, licere christianis plures simul habere uxores, et hoc nulla lege divina esse prohibitum, anathema sit."*—St. Augustine, *De Bono Coniug.*, c. 17, n. 20: *"Non sicut uni viro etiam plures habere liceat uxores, ita uni feminae plures viros, nec proles ipsius causa, si forte illa parere posset, ille generare non posset. Occulta enim lege naturae amant singularitatem quae principantur; subiecta vero non solum singula singulis, sed si ratio naturalis, vel socialis admittit, etiam plura uni non sine decore subduntur. Neque enim sic habet unus servus plures dominos, quomodo plures servi unum dominum. Ita duobus seu pluribus maritis vivis nullam legimus servisse sanctarum, plures autem feminas uni viro legimus (servisse), quum gentis illius societas sinebat et temporis ratio suadebat, neque enim contra naturam nuptiarum est. Plures enim feminae ab uno viro fetari possunt, una vero a pluribus non potest (haec est principiorum vis), sicut multae animae uni Deo recte subduntur. Ideoque non est verus Deus animarum nisi unus, una vero anima per multos falsos deos fornicari potest, non fecundari."* (Migne, *P. L.*, XL, 387).—*De Nupt. et Concup.*, l. I, c. 9, n. 10 (*P. L.*, XLIV, 419.—St. Thomas, *Sum-*

becomes his slave.[39] Polygamy is consequently forbidden by divine law, and the Church has strongly insisted on the unity of Christian marriage from the beginning of her career.[40]

Gen. II, 24: "They shall be two in one flesh" (cfr. Matth. XIX, 5; Eph. V, 31) must be interpreted ethically.

ma Theol., 3a, Suppl., qu. 65, a. 1: *"Pluralitas uxorum neque totaliter tollit neque aliqualiter impedit matrimonii primum finem, quum unus vir sufficiat pluribus uxoribus fecundandis et educandis filiis ex eis natis. Sed secundarium finem, etsi non totaliter tollat, tamen multum impedit, eo quod non facile potest esse pax in familia, ubi uni viro plures uxores iungunur, quum non possit unus vir sufficere ad satisfaciendum pluribus uxoribus ad votum, et etiam quia communicatio plurium in uno officio causat litem: sicut figuli corrixantur ad invicem, et similiter plures uxores unius viri. Tertium autem finem totaliter tollit, eo quod sicut Christus est unus, ita et ecclesia una. Et ideo patet ex dictis, quod pluralitas uxorum quodammodo est contra legem naturae et quodammodo non."*

39 Gen. I, 27; II, 24; IV, 19 sqq.; cfr. Gen. VI, 2.; Matth. XIX, 2 sqq.; Luke XVI, 18; Rom. VII, 3; 1 Cor. VII, 3 sqq., 10.—*Cat. Rom.*, P. II, c. 8, qu. 19.—St. Augustine, *De Nupt. et Concup.*, l. I, c. 9, n. 10: *"Verumtamen magis pertinere ad nuptiarum bonum non unum et multas, sed unum et unam, satis indicat ipsa prima divinitus facta coniugum copula, ut inde connubia sumerent initium, ubi honestius attenderetur exemplum."* (Migne, *P. L.*, XLIV, 419.).—St. Jerome, *Adv. Iovinian.* l. I. n. 14: *"Ubi numerus maritorum est, ibi vir, qui proprie unus est, esse desiit. Una costa a principio in unam uxorem versa est. Et erunt, inquit, duo in carne una* (Gn. ii, 24), *non tres neque quattuor, alioquin iam non duo, si plures."* (*P. L.*, XXIII, 233).—The passage in Tertullian's Montanistic treatise, *De Exhort. Castitatis*, c. 5: *"Homo Dei Adam et mulier Dei Eva unis inter se nuptiis functi formam hominis Dei de originis auctoritate et prima Dei voluntate sanxerunt"* (ed. Leopold, P. II. 103), refers to first in opposition to second marriage, which Tertullian regards as tantamount to fornication (cfr. *ibid.*, c. 9: *"Non aliud dicendum erit secundum matrimonium quam species stupri"*). —V. Jäkel, *Studien zur vergleichenden Frauenkunde*, Berlin 1901, pp. 140 sqq.—G. Dorys, *La Femme Turque*, Paris 1902, pp. 236 sqq.

40 *Conc. Trid.*, Sess. XXIV, can. 2.—Minucius Felix, *Octavius*, c. 31: *"Unius matrimonii vinculo libenter inhaeremus cupiditate procreandi aut unam scimus aut nullam."* (Migne, *P. L.*, III, 337).—Clement of Alexandria, *Stromata*, l. III, c. 12 (*P. G.*, VIII, 1184). —St. Chrysostom, *Hom. in Gen.*, LVI, c. 3 (*P. G.*, LIV, 489).—Nicholas I, *Epist.*, 97, n. 51 (*P. L.*, CXIX, 999).

The meaning is that husband and wife should share the same ideas and sentiments, bear prosperity and adversity together, and act as if they were but one person. The text contains an indirect commendation of monogamy, because the relationship which it describes would be impossible in a polygamous marriage.

Gen. VI, 2: "The sons of God seeing the daughters of men, that they were fair, took to themselves wives of all which they chose [*i. e.*, as many as] they chose," describes not a good, but an evil deed.[41]

A non-Catholic writer says: "Monogamy is a burden to both parties, but weighs more heavily upon the husband than upon the wife. . . . From this fact the advocates of free love argue, with truly masculine logic, that monogamy ought to be abolished. Free love would probably be a more agreeable relation than marriage for the average man of to-day. For many it would merely mean the recognition and legalization of an existing condition. But for the female sex it would just as certainly prove a source of serious dangers and aberrations, fraught with far worse consequences than the present 'yoke,' of which a few neurotic women so bitterly complain. . . . The average man prefers polygamy, whereas the average woman rather favors monogamy. A radical change of the existing order would merely reverse the situation without improving it. . . . But there stands in favor of marriage and against free love this powerful argument: that the State recognizes (at least in principle) the duty of caring for children only in connection with a monogamous union concluded for life. Marriage and free love are equally inacceptable to both sexes: neither will be satisfied, no matter which solution

41 Ehrlich, *Randglossen zur hebr. Bibel*, Vol. I, 12, 29.

is chosen. But the necessity of providing for the offspring decides the question absolutely in favor of marriage. The modern social community which we call State, and which has serious defects, but still greater advantages, demands monogamy in the interest of the child. All other expedients to safeguard the interests of the child and the liberty of the parents, are purely theoretical and utopian, and their occasional successful adoption within very small circles does not prove their adaptability on a larger scale. For the sake of the child it is necessary, therefore, that marriage be established by law. . . . We may agree with Björnson that the ideal of the woman, namely, chastity before and outside of marriage, should also be the ideal of the man. . . . Chastity on the part of the male is an absolutely reasonable demand and indispensable under present conditions for a healthy social life. Hence it should be striven for with might and main, even though, on account of its ideal nature, it can never be completely attained." [42]

If polygamy is contrary to the natural law because it violates the rights of woman and endangers the welfare of the family, how could God permit it under the Old Law? Fr. Victor Cathrein, S.J., answers this question as follows: "Inasmuch as polygamy is opposed to equal rights for both sexes, God could permit it because He is the supreme Lord and therefore can dispense or withdraw human rights as He pleases in His wisdom and holiness. The evil consequences result-

42 E. Platzhoff-Lejeune, *Handschuhmoral,* 2nd ed., pp. 16 sqq., 21.—F. W. Förster, *Sexualethik und Sexualpädagogik,* 3rd ed., Munich 1910, pp. 45 sqq., 83 sqq.

ing from polygamy He can prevent in some other way, or, for wise reasons, tolerate temporarily, if the chief purpose of marriage, namely, the propagation of the species, is thereby more quickly attained and this object is desirable for very particular reasons, as it was in the time of the Patriarchs." [43]

b) The *remarriage* of either party after the death of the other (*nuptiae secundae, bigamia successiva*) is permitted, in fact, St. Paul expressly says that "the younger [widows] should marry, bear children, be mistresses of families, give no occasion to the adversary to speak

43 V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., p. 418.—St. Augustine, *Contra Faustum Manich.,* l. XXII, c. 47: *"Iam vero filio eius Iacob quod pro ingenti crimine quattuor obiciuntur uxores, generali praelocutione purgatur. Quando enim mos erat, crimen non erat, nunc propterea crimen est, quia mos non est. Alia enim sunt peccata contra naturam, alia contra mores, alia contra praecepta. Quae quum ita sint, quid tandem criminis est, quod de pluribus simul habitis uxoribus obicitur sancto viro Iacob? Si naturam consulas, non lasciviendi, sed gignendi causa illis mulieribus utebatur; si morem, illo tempore atque in illis terris hoc factitabatur; si praeceptum, nulla lege prohibebatur."* (Migne, *P. L.,* XLII, 428).—Idem, *De Bono Coniug.,* c. 15, n. 17: *"Non est nunc propagandi necessitas, quae tunc fuit, quando et parientibus coniugibus alias propter copiosiorem posteritatem superducere licebat, quod nunc certe non licet. Nam tantum affert opportunitatis ad aliquid iuste agendum seu non agendum temporum secreta distinctio, ut nunc melius faciat, qui nec unam duxerit, nisi se continere non possit. Tunc autem etiam plures inculpabiliter ducebant, et qui se multo facilius continere possent, nisi aliud pietas illo tempore postularet."* (*P. L.,* XL, 385).—Idem, *De Nupt. et Concup.,* l. I, c. 8, n. 9: *"Quibusdam etiam singulis plures habere concessum est, ubi ratio fuit prolis multiplicandae, non variandae appetitio voluptatis."* C. 9. n. 10: *"Unde si una concumbat cum pluribus, quia non est ei hinc multiplicatio prolis, sed frequentatio libidinis, coniux non potest esse, sed meretrix."* (*P. L.,* XLIV, 419).— Cfr. St. Thomas, *Summa Theol.,* 3a, Suppl., qu. 65, art. 2; A. Lehmkuhl, S. J., *Theol. Mor.,* Vol. II, n. 916 sqq.

evil." [44] In matter of fact it is far more difficult for young widowers and widows to practice sexual continence than it is for those who have never been married.[45]

Regarded merely as a sign of sexual incontinence, second marriage appears as an imperfection, and there have been theologians who on this account declared it to be forbidden. But a second marriage need not be inspired entirely, or even mainly, by sensuality. It may, on

[44] 1 Tim. V, 14; 1 Cor. VII, 8 sq., 39 sq.—St. Cyril of Jerusalem, *Catech.*, IV, c. 26: Καὶ οἱ μονόγαμοι δὲ τοὺς δευτέρῳ γάμῳ συμπεριενεχθέντας μὴ ἀποδοκιμαζέτωσαν· καλὸν μὲν γὰρ ἡ ἐγκράτεια καὶ θαυμάσιον, συγγνωστὸν δὲ καὶ τῷ δευτέρῳ γάμῳ προσελθεῖν, ἵνα μὴ πορνεύσωσιν οἱ ἀσθενεῖς (Migne, *P. G.* XXXIII, 488 sq).—St. Augustine, *De Bono Viduit.*, c. 11, n. 14: *"Haec ideo disputo, ne arbitreris vel secundas nuptias crimen esse vel quascunque nuptias, quum sint nuptiae, malum esse. Non itaque, illas abs te damnatas velis esse, sed spretas. Bonum ergo continentiae vidualis luculentius decet, quum pro illo vovendo et profitendo possint contemnere feminae quod ei licet et licet."*—*Ibid.*, c. 12, n. 15: *"De tertiis et quartis et de ultra pluribus nuptiis solent homines movere quaestionem. Unde ut breviter respondeam, nec ullas nuptias audeo damnare nec eis verecundiam numerositatis auferre."* (*P. L.*, XL, 439).—St. Jerome, *Epist.*, 54 (al. 10), n. 18: *"Cogita cotidie, te* [*Furiam viduam*] *esse morituram, et nunquam de secundis nuptiis cogitabis."* (*P. L.*, XXII, 560).— St. Thomas, *S. Th.*, 3a, Suppl., qu. 63, art. 1 sq.

[45] Tertullian, *Ad Uxor.*, l. I, c, 8: *"Licet in illis* [*virginibus*] *integritas solida et tota sanctitas de proximo visura sit faciem Dei, tamen vidua habet aliquid operosius, quia facile est, non appetere quod nescias, et aversari quod desideraveris nunquam. Gloriosior igitur continentia, quae ius suum sentit, quae quid viderit, novit. Poterit virgo felicior haberi, at vidua laboriosior; illa quod bonum semper habuit, ista quod bonum sibi invenit; in illa gratia, in ista virtus coronatur. Quaedam enim sunt divinae liberalitatis, quaedam nostrae operationis."* (Ed. Leopold, P. II, 69).—St. Jerome, *Epist.*, 123 (*al.* 11), n. 11: *"Certa multo laboriosius est, non frui eo quod habeas, quam desiderare quod amiseris. Unde et virginitas in eo facilior est, quod carnis incentiva non novit, et viduitas in eo sollicitior, quod praeteritas animo recolit voluptates; maxime si se vivum putet perdidisse, non praemisisse; quorum alterum doloris, alterum gaudii est."* (Migne, *P. L.*, XXII, 1053).

the contrary, be contracted for honorable and highly moral motives, such as zeal for one's own salvation, the welfare of society, etc., and hence the Church does not object to it. That she refuses to confer the nuptial blessing upon a bride who has received it before, must not be interpreted as a disapproval of second marriages. That blessing is for life. Not everything that looks stricter is morally more perfect, else the self-immolation of widows in India would constitute the highest ideal of marital fidelity.[46]

Tertullian, who in his Catholic period had permitted, nay exalted second marriage with all the power of his matchless rhetoric, after joining the Montanists changed his attitude on this as on many other questions, and not only condemned the remarriage of widows and widowers, but denounced it as tantamount to fornication.[47] This was an error, though it need not be regarded as specifically Montanistic, since several orthodox writers before Tertullian, *e. g.,* Athenagoras,[48] Theophilus,[49] and Irenæus [50] seem to have held the same view. Other ecclesiastical authors of the early period permitted second marriage, but regarded it as more or less an imperfection.[51]

3. The indissolubility of the marriage bond (*inseparabilitas vel indissolubilitas matrimonii*) [52]

46 Linsenmann, *Moraltheologie,* p. 637.

47 *Ad Uxor.,* l. II, c. 8 (*ed.* Leopold, P. II, 76); *De Exhort. Castit.,* c. 9. *De Monogamia,* c. 1: *"Unum matrimonium novimus sicut unum Deum."* (Ed. Leopold, P. II, 112).—De Labriolle, *"La Lutte de Tertullien contre les Secondes Noces,"* in the *Annales de Philos. Chrét.,* Paris 1907, pp. 362 sqq.

48 *Supplic.,* c. 33.

49 *Ad Autol.,* l. III, c. 15.

50 *Adv. Haeres.,* III, 17, 2.

51 Cfr. J. Müller, *Das sexuelle Leben der christlichen Kulturvölker,* pp. 35 sqq.; J. Mausbach, *Altchristl. und moderne Gedanken über Frauenberuf,* pp. 23 sqq.

52 Cfr. Pohle-Preuss, *The Sacraments,* Vol. IV, pp. 183 sqq.—A. Cigoi, *Die Unauflösbarkeit der christl. Ehe und die Ehescheidung,* Paderborn 1895, pp. 151 sqq., 193

is to a certain extent founded on the nature and purpose of Matrimony, inasmuch as it determines the right relationship of husband and wife to each other, as well as that between parents and children, and *vice versa.* But the chief reason why marriage is indissoluble is it has been raised to the rank of a Sacrament and constituted a symbol of Christ's union with His church. The Cathechism of the Council of Trent explains this as follows: "Although it belongs to marriage as a natural contract to be indissoluble, yet its indissolubility arises chiefly from its nature as a Sacrament, as which it attains to its highest perfection. To make its bond dissoluble would be repugnant both to the care of bringing up offspring and to the other advantages of marriage." [53]

Pope Pius IX, in his famous Syllabus of Errors, condemned the proposition that "The marriage bond is not indissoluble by natural law and in various cases divorce, in the strict sense of the

sqq.—J. Fahrner, *Geschichte der Ehescheidung im kanonischen Recht,* Vol. I, Freiburg 1903, pp. 11 sqq.—K. Böckenhoff, *Die Unauflösbarkeit der Ehe,* Munich, 1908, pp. 24 sqq.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 429 sqq.—M. C. Forest, O. P., *Divorce* (tr. by J. K. Foran), Ottawa, 1921, pp. 19 sqq.

53 *Cat. Rom.,* P. II, c. 8, qu. 11: *"Quamvis matrimonio, quatenus naturae est officium, conveniat, ut dissolvi non possit, tamen id maxime fit, quatenus est sacramentum, qua ex re etiam in omnibus, quae naturae lege eius propria sunt, summam perfectionem consequitur. Tamen et prolis educandae studio et aliis matrimonii bonis repugnat, ut eius vinculum dissolubile sit."*

term, may be sanctioned by civil authority." [54]

Hence Christian marriage, when properly contracted and consummated, is absolutely indissoluble.[55] "Whosoever shall put away his wife and marry another," says Jesus Christ Himself, "committeth adultery against her." [56] And St. Paul writes to the Corinthians: "To the married I give this charge,—nay, not I, but the Lord,—that a wife depart not from her husband (but if she have departed, let her remain unmarried, or be reconciled to her husband), and that a husband put not away his wife." [57] Hence, even though the married may separate, they cannot marry again, since the matrimonial bond is dissolved only by death. The Catholic Church has never

54 *Syllabus Errorum*, n. 67: *"Iure naturali matrimonii vinculum non est indissolubile, et in variis casibus divortium proprie dictum auctoritate civili sanciri potest."* (Denzinger-Bannwart, n. 1767).—St. Thomas, *Summa Theol.*, 3a, Suppl., qu. 67, art. 1 sq.—Cfr. *Cat. Rom.*, P. II, c. 8, qu. 25.—G. Schneemann, *Die Irrtümer über die Ehe*, Freiburg i. B. 1865, pp. 104 sqq.

55 St. Augustine, *De Bono Coniug.*, c. 24, n. 32: *"Bonum nuptiarum per omnes gentes atque omnes homines in causa generandi est et in fide castitatis; quod autem ad populum Dei pertinet, etiam in sanctitate sacramenti, per quam nefas est etiam repudio discedentem alteri nubere, dum vir eius vivit, nec saltem ipsa causa pariendi; quae quum sola sit qua nuptiae fiunt, nec ea re non subsequente propter quam fiunt, solvitur vinculum nuptiale nisi coniugis morte."* (*P. L.*, XL, 394).

56 Mark X, 11 sq.; cfr. Matth. V, 32; XIX, 9; Luke XVI, 19.—F. E. Gigot, *Christ's Teaching Concerning Divorce*, N. Y. 1912, pp. 43 sqq.—J. MacRory, "The Preaching of the New Testament on Divorce," *Irish Theol. Quarterly*, Vol. V, No. 17; Vol. VI, No. 1.

57 1 Cor. VII, 10 sq.; cfr. Rom. VII, 2 sq.—J. MacRory, *The Epistles of St. Paul to the Corinthians*, Dublin 1915, pp. 92 sq.—F. E. Gigot, *op. cit.*, pp. 95 sqq.; A. Lehmkuhl, S. J., *Theol. Mor.*, Vol. II, n. 920 sqq.

wavered in proclaiming the indissolubility of marriage.[58] The question whether a woman may ever leave her husband and marry another, is answered by St. Jerome as follows: "Cutting off all subterfuges, the Apostle [St. Paul] positively declared that the woman who marries another while her husband lives, is an adulteress. . . . Let the husband be an adulterer, a sodomite, steeped in iniquity and therefore deserted by his wife,—yet he remains her husband as long as he lives, and she is not allowed to marry another. . . . He who marries a discharged wife is an adulterer, no matter whether she has left her husband or he has left her." [59]

Although the *indissolubility of marriage* may not be absolute under the moral law of nature,[60]

58 *Conc. Trid.*, Sess. XXIV, can. 7 (cfr. Pohle-Preuss, *The Sacraments*, Vol. IV, pp. 190 sq.).—Tertullian, *De Monogamia*, c. 9: *"Solus ille separabit, qui et coniunxit, separabit autem non per duritiam repudii, quam exprobat et compescit, sed per debitum mortis."* (Ed. Leopold, P. II, 123).—St. Chrysostom, *Hom. in Matth.*, XVII, c. 4 (Migne, *P. G.*, LVII, 259).—St. Basil, *Epist.*, 199, c. 31, 36, 48 (*P. G.*, XXXII, 727).—St. Augustine, *De Serm. Dom. in Monte*, l. I, c. 16, n. 48 (*P. L.*, XXXIV, 1253).—Idem, *Serm.*, 292 (*al.* 49 *inter Hom.* 50), c. 2 (*P. L.*, XXXIX, 1710).—Idem, *De Coniug. Adulter.*, l. II, c. 13, n. 13 (*P. L.*, XL., 479).—Idem, *De Nupt. et Concup.*, l. I, c. 10, n. 11: *"Huius procul dubio sacramenti (Eph. v, 25) res est, ut mas et femina connubio copulati, quamdiu vivunt, inseparabiliter perseverent, nec liceat exceptâ causâ fornicationis a coniuge coniugem dirimi. Hoc enim custoditur in Christo et Ecclesia, ut vivens cum vivente in aeternum nullo divortio separetur. Cuius sacramenti tanta observatio est . . . ut, quum filiorum procreandorum causâ vel nubant feminae vel ducantur uxores, nec sterilem coniugem fas sit relinquere, ut alia fecundata ducatur."* (*P. L.*, XLIV, 420).

59 *Epist.*, 55 (*al.* 147), n. 3 (Migne, *P. L.*, XXII, 562 sq.)

60 Deut. XXIV, 1 sqq.; Matt. V, 31; XIX, 7 sq.—On this controverted question see Pohle-Preuss, *The Sacraments*, Vol. IV, pp. 188 sqq.

yet there can be no doubt that it corresponds more perfectly than dissolubility to the various purposes of Matrimony, and that, at any rate, *arbitrary divorce* is directly contrary to the natural law. Experience furthermore teaches that divorce inevitably leads to a loosening of the marriage bond and entails serious moral and social disorders.[61] If in any case it becomes dangerous or intolerable for a husband and a wife to remain together, a temporary or permanent separation from bed and board (*separatio a mensa et toro*) will solve the difficulty.[62]

The fact that the marriage bond is indissoluble should, and as a rule does, result among Catholics in a more careful choice of partners for life, and thus provides an excellent guarantee for a truly moral union. But he who has made his choice carelessly, without regard for the principles of sound ethics, has no right to complain of the harshness of the law if his marriage turns out unhappy, but is in duty bound to try as hard as he can to convert the relationship into a truly moral one. Necessity often reconciles married couples who, if they could have easily obtained a divorce, would never have gotten away from a life of superficiality and dissipation. The marriage bond in such cases serves as a means to temper egoism and to restrain an undue craving for liberty.

61 Forest-Foran, *Divorce,* Ottawa 1921, pp. 59 sqq.; H. Woods, S. J., *A First Book in Ethics,* N. Y. 1923, pp. 261 sqq.; A. Lehmkuhl, S. J., art. "Divorce," in the *Catholic Encyclopedia,* Vol. V, pp. 54 sqq.

62 *Conc. Trid.,* Sess. XXIV, can. 8: *"Si quis dixerit, ecclesiam errare, quum ob multas causas separationem inter coniuges quoad torum seu quoad cohabitationem ad certum incertumve tempus fieri posse decernit, anathema sit."*

It is objected that the strict enforcement of the law of indissolubility not only causes many persons to suffer needlessly, but exposes them to severe temptations and spiritual attacks for the rest of a possibly long life. We reply that, in the first place, when a marriage is unhappy, both parties are as a rule to blame, and hence merely suffer the penalty of their own sins, and their guilt is not expiated and their character will not be improved by placing them in a position where they can repeat the unsuccessful experiment at the risk of others. But when an innocent party is compelled to live in an unhappy marriage, he or she should remember that many an undeserved cross must be borne in this vale of tears, and the more patiently we submit to the trials God sends us, the better it will be for us in time and eternity. As a last and extreme measure of relief from danger to soul and body the Church is willing to grant a *separatio a mensa et toro*. In case such a separation takes place, the innocent party must, though there be no guilt on his or her part, renounce the gratification of the sexual instinct; nor is this a greater misfortune than when, as not infrequently happens, disease or some other reason compels a faithful husband or wife to abstain from the use of the marital privilege or forces many to remain single.

To the objection that an innocent wife is punished with undue severity by a separation from bed and board because she cannot escape a state of loneliness and helplessness by contracting a second marriage, we may reply that nowadays women are no longer as helpless as they used to be and can find legal or civil protection (alimony) and employment much more easily than in bygone days.[63]

Though an individual may now and then suffer grievously under the law of indissolubility, and though the pur-

[63] Linsenmann, *Moraltheol.*, p. 638.

pose of marriage may not always be attained in spite of it, there can be no doubt that the chief object of Matrimony, namely the *bonum commune,* absolutely demands that the marriage tie be kept inviolate.[64] "Marriage," says Goethe, "is the beginning and the end of all culture. It gentles the boor and affords the educated a splendid opportunity to prove their nobility of character. Marriage must needs be indissoluble, for it bestows so much happiness that no single misfortune can outweigh it."

"The question whether legislation should make divorce more difficult or build a golden bridge for it when married people find their burden unbearable," says a non-Catholic writer, "is a profoundly ethical one, both sides of which can be defended with solid arguments. To me it seems that the weightier reasons speak *against easy divorce,* because easy divorce paralyzes the courage and strength that men need for solving their difficulties in accord with the moral law, and tempts them to look prematurely for an external solution of them; and also because easy divorce undermines the security and confidence of both parties to the matrimonial contract." [65]

READINGS.—St. Thomas, *Summa Theol.,* 3a, Suppl., qu. 41–44; 44, 49, 64–65.—*Catechismus Romanus,* P. II, c. 8, qu. 23–34.—Sporer-Bierbaum, *Theol. Mor.,* Vol. III, 2nd ed., 1009 sqq.—St. Alphonsus, *Theol. Mor.,* l. VI, n. 881–883, 909–954.—J. A. Stapf, *Die christliche Moral,* Vol. III, Innsbruck 1842, pp. 357 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 627 sqq.—J. Schwane, *Die Gerechtigkeit,* pp. 153 sqq.—Rive-Umberg, S.J., *Die Ehe,* 2nd ed., pp. 114 sqq., 312 sqq. Ratisbon, 1921.—V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 415 sqq.—

64 St. Thomas, *Summa Theol.,* 3a, Suppl., qu. 67, art. 1, ad 4.—IDEM, *Summa contra Gentiles,* l. III, c. 124.—Cfr. J. Mausbach, *Die Stellung der Frau im Menschheitsleben,* M. Gladbach 1906, pp. 19 sqq.

65 Schneidewin, *Die antike Humanität,* pp. 180 sq.

A. Stöckl, *Das Christentum,* Vol. III, pp. 152 sqq.—Wilhelm, *Das Eheleben,* 2nd ed., (1910), pp. 232 sqq.—J. E. Ross, *Christian Ethics,* pp. 366 sqq.—F. W. Förster, *Marriage and the Sex Problem,* N. Y. 1912, Pt. I, Ch. IX.—M. Cronin, *The Science of Ethics,* Vol. II, pp. 415 sqq.—A. Vermeersch, S.J., *De Castitate,* Bruges 1919, pp. 234 sqq.—J. Antonelli, *Medicina Pastoralis,* Vol. II, 4th ed., pp. 493 sqq., 497 sqq. —T. Slater, S.J., *A Manual of Moral Theology,* Vol. II, pp. 361 sqq.—Cardinal D. Mercier, *The Duties of Conjugal Life,* London (C.T.S.), *s. a.*

SECTION 2

THE SOCIAL POSITION OF WOMAN

I. Holy Scripture teaches that while man and woman are united by God in a most intimate union, woman is not man's equal, but his helpmate and companion. The husband is the head of the family, and the wife is subject to him as such, though his equal in personality and dignity.[1] This was the relation originally established by the Creator. In course of time it became essentially altered, to the great disadvantage of woman, but Christianity restored the lost equality by teaching that every human soul, regardless of sex, has the same value before God.[2]

In emphasizing the moral equality of both

1 Gen. I, 26 sq.; II, 18, 22–24; III, 16; V, 2.—Cfr. St. Augustine, *De Mor. Eccl. Cath.*, l. I, c. 30, n. 6: *"Tu (Ecclesia) feminas viris suis non ad explendam libidinem, sed ad propagandam prolem et ad rei familiaris societatem castâ et fideli oboedientiâ subicis. Tu viros coniugibus non ad illudendum imbecilliorem sexum, sed sinceri amoris legibus praeficis."* (Migne, *P. L.*, XXXII, 1336).—Dionys. Rickel, *Comment. in Sent.*, I, dist. 3, qu. 6: *"Non magis est vir per se intellectualis quam mulier."*

2 John III, 5; Gal. III, 27 sq.; V, 6; VI, 15. Cfr. Apoc. V, 14 sqq.—J. Döllinger, *Heidentum und Judentum*, Ratisbon 1857, pp. 697 sqq.; 781 sqq.; C. S. Devas, *Studies in Family Life*, London 1886, pp. 4 sqq.; C. Bader, *La Femme Romaine*, Paris, 1877; Schneidewin, *Die antike Humanität*, pp. 175 sqq.; Aug. Roesler, C. SS. R., *Die Frauenfrage*, 2nd ed., pp. 144 sqq.; C. S. Devas, *The Key to the World's Progress*, London 1906, pp. 174 sqq., 151 sqq.

sexes, however, and their equal worth in the eyes of God, the Catholic Church does not dispense the wife from the duty of being subject to her husband. It follows that woman in public and social life may legitimately aspire to no other rôle than that of a true helpmate to man. To attempt to raise her to a state of complete independence would be contrary to the principles of Christianity.[3]

"The enemies of the Christian Church," says Cathrein, "who would fain tear one jewel after another from the crown of her merits, assert that it was not Christianity, but the progress of civilization that emancipated woman from slavery. But this contention is refuted by the fact that in Rome and Greece woman's position deteriorated in proportion as civilization and culture,—taking these terms in their commonly accepted sense,—advanced. At the time of Homer and under the Roman kings, woman occupied a respectable position; but when pagan civilization reached its climax, she became a slave. In ancient Egypt, too, and in China, the progress of civilization was marked by the degradation of the female sex. And even to-day, among the nations that have shut themselves off against the influence of Christianity, the status of woman is no better than it was in pagan antiquity. Especially Mohammedanism, in spite of all the external cul-

3 1 Cor. XI, 7–12; XIV, 34; Eph. V, 22–24; Col. III, 18; 1 Tim. II, 11 sqq.—J. Schell, *Kath. Dogmatik,* Vol. III, ii, pp. 666 sqq.; A. Harnack, *Die Mission und Ausbreitung des Christentums,* Vol. II, 2nd ed., pp. 51 sqq.; H. Jordan, *Das Frauenideal des Neuen Testamentes und die älteste Christenheit,* Leipsic 1909.

ture which it produced at one time in Spain and Arabia, has degraded woman to the rank of a slave."[4]

We are told that the theological writers of the Patristic and those of the medieval period had a very low opinion of women and marriage. This is demonstrably untrue.[5] While it cannot be denied that some medieval preachers were guilty of deplorable exaggerations in their treatment of the fair sex, we must not overlook the fact that the great majority of theologians speak of woman and Matrimony in the highest terms.[6]

4 H. Dacier, *La Femme d'après Saint Ambroise,* Paris, 1900.—St. Augustine, *Serm.*, 192 (*al.* 16 *De tempore*), c. 2: *"Exsultate, virgines Christi, consors vestra est mater Christi. Christum parere non potuistis, sed propter Christum parere noluistis. Qui non ex vobis natus est, vobis natus est. Verumtamen si verbi eius memineritis, sicut meminisse debetis, estis etiam vos matres eius, quia voluntatem facitis Patris eius* (Mt. xii, 50). *Exsultate, viduae Christi; qui fecundam fecit virginitatem, illi vovistis continentiae sanctitatem. Exsulta etiam castitas nuptialis, omnes fideliter viventes cum coniugibus vestris; quod amisistis in corpore, in corde servate. Ubi iam non potest esse a concubitu caro integra, sit in fide virgo conscientia, secundum quam virgo est omnis Ecclesia. In Maria Christum pia virginitas peperit; in Anna Christum viduitas parvum grandaeva cognovit; in Elisabeth Christo coniugalis castitas et anilis fecunditas militavit. Omnes gradus fidelium membrorum capiti contulerunt, quod ipsius gratia conferre potuerunt."* (Migne, *P. L.*, XXXVIII, 1012).—*Breviar. Rom.*, d. d. 8. Iulii, l. 1, resp. 1: *"Regali exorta progenie triumphat in coelis Elisabeth (regina Portugalliae) triplici circumdata varietate meritorum. Nam in terra in triplici vitae gradu posteris imitanda virtutum reliquit exempla: Virginalem statum, coniugalem et vidualem inoffenso pede concurrit."*—Cfr. A. Roesler, *Die Frauenfrage,* 2nd ed., pp. 292 sqq. and this *Handbook,* Vol. I, n. 92, note 7.—C. S. Devas, *The Key to the World's Progress,* pp. 45, 50.

5 V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 409 sqq. Cfr. J. Schmitz and G. Hütten, *Gattin und Mutter im Heidentum, Judentum und Christentum,* Einsiedeln 1904; Wilke, *Das Frauenideal und die Schätzung des Weibes im Alten Testament,* Leipsic 1907; Ehrlich, *Randglossen zur hebr. Bibel,* Vol. I, pp. 10, 180 sqq.; Pohle-Preuss, *The Sacraments,* Vol. IV, pp. 153 sqq.

6 Pohle-Preuss, *The Sacraments,* Vol. IV, pp. 153 sqq.; Landmann, *Das Predigtwesen in Westfalen,* 180 sq.; Braun, *Die kath. Predigt,* 6 sqq.; Pilatus (V. Naumann), *Quos ego? Fehdebriefe wider den Grafen Paul Hoensbroech,* 2nd ed., Ratis-

II. The modern movement for the emancipation of the feminine sex is not purely revolutionary, but had its origin in the more or less justifiable desire of women to enlarge the sphere of their industrial activity and to make a decent living under morally and economically acceptable conditions. While the women of the so-called lower classes, that is, laboringmen's wives and daughters, find their work in the family circle or in clerical and industrial pursuits, those of the so-called educated classes, who cannot or will not marry, feel they lack adequate opportunities to earn a livelihood and make themselves useful to humanity. This condition of affairs is aggravated by the displacement of house industries by factories. Hence there is an excess of work for the so-called proletarian women and an insufficiency of occupations for the women of the middle and higher classes. This fact has led to a division of the feminist movement into two camps. One demands a widening of the sphere in which women can work for their own support and the benefit of society, whereas the other wishes to withdraw the female sex from

bon 1903, pp. 430 sqq.; H. Crohns, *Die Summa Theologica des Antonin von Florenz und die Schätzung des Weibes im Hexenhammer,* Berlin 1903; J. Mausbach, *Altchristl. und moderne Gedanken über Frauenberuf,* pp. 7 sqq.; E. Vacandard, *"La Question de l'âme des Femmes et le Concil de Macon,"* in the *Revue du Clergé Français,* Vol. LVIII (1900), pp. 216 sqq.—Cfr. this *Handbook,* Vol. I, p. 242, note 12; J. Mausbach, *Catholic Moral Teaching and its Antagonists,* pp. 301 sqq.

such occupations as destroy family life and make woman's lot harder, especially since men have learned to regard women as competitors.

In conformity with this division of opinion there are two distinct groups of emancipationists or women's rights advocates.

1. The *radical* or *extreme group* favors the extinction of all differences in social life and demands absolute equality for the two sexes in economic and all other relations,[7] including politics. It cannot be denied that in some countries there are inequalities which violate justice and favor a double standard of morality. But the fact that the male sex has in course of time appropriated unto itself certain privileges which are not based upon the natural law, does not justify the conclusion that all male privileges *in globo* are contrary to the natural order and that woman should not be subject to man in any respect. Nature herself has made the sexes unequal and woman dependent on man, and any attempt to wipe out this inequality would be unnatural. Morever, complete equality of the sexes would not only lead to the abolition of the family and the education of children by the State, but it

7 L. Braun, *Die Frauenfrage, ihre geschichtliche Entwicklung u. wirtschaftliche Seite,* Leipsic 1901, pp. 156 sqq.; E. Gnauck-Kühne, *Die deutsche Frau um die Jahrhundertwende,* Berlin 1907, 2nd ed.; Turgeon, *Le Feminisme Français,* Vol. I, pp. 67 sqq., 173 sqq., 341 sqq.; Vol. II, pp. 10 sqq., 201 sqq., 341 sqq.; S. Deploige, *L'Émancipation des Femmes,* Louvain 1902.

would render the social position of woman worse instead of better. For the emancipated woman, when compelled to enter into free and unlimited competition with man, would necessarily succumb because her physical constitution and mental make-up incapacitate her for many kinds of labor to which man is fully equal. Complete equality between the sexes, therefore, would not solve, but rather intensify the problem, especially if it were worked out on the basis of radical Socialism.[8]

"Women do not have less rights than men," says Dr. Linsenmann, "but their rights are different. They are no less capable than men of being educated and trained, but their nature requires a different education and training. They are as efficient as men, but in another sphere. Therefore, to give them the education and training that befits their nature, and to open to them those industrial occupations for which they are fitted, is entirely just. But the differences of natural and intellectual organisation existing between the two sexes must not be denied or disregarded. Woman is fit for nursing, but not so fit for medical practice, for many duties of which she lacks the necessary strength. She is fit for sanitary service in war, but not for military operations, and even in hospitals she cannot entirely supply the place of man. Her adaptation for the teaching profession is limited, and whether she should devote her life to scholarly research, to authorship, or to art, is a question that has not yet

8 John Stuart Mill, *The Subjection of Women,* 5th ed., London 1895; V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 251 sqq.

been definitively settled. On the other hand there are industrial pursuits which are peculiarly adapted to her nature, and it may be regarded as an act of unfairness if men crowd into these pursuits, thereby narrowing the circle within which women must seek their livelihood. There are other pursuits which women can follow with nearly the same ability and success as men, *e. g.*, book-keeping, telegraphy, etc., and it will not require a very strenuous battle to conquer these occupations for them. They can obtain them without difficulty if they show that they can do the required work as efficiently as, and more cheaply than, men. They can work more cheaply, because their demands are smaller; but as soon as they begin to acquire artificial and costly habits, which it takes larger incomes to satisfy, male labor will again crowd out female labor." [9]

2. The conservative wing of the woman's party, more commonly known as "Liberal," demands both political and social equality.[10]

9 Linsenmann, *Lehrb. der Moraltheol.*, pp. 642 sq. Dr. J. A. Ryan does not agree with this view. He says (*Social Reconstruction*, p. 43 sq.): "If women and men are paid at different rates in the same occupation, one of two things will happen; either the man's wage will be reduced to the level of the woman's, or men will insist that women get out of that industry. It is not possible for the two sexes to work side by side and receive different rates of wages,—I say, it is not economically possible. Sometimes one of these alternatives takes place and sometimes the other. In the telephone industry, at least in the telephone exchanges, what has happened is that the men have abandoned it, and the wage has gone down to the woman's level. In other places, where the men are strongly organized, they insist on monopolizing the occupation. This is a simple reason and a sufficient one why women should have the same wages as men when engaged in the same work." Further down in the same lecture Dr. Ryan contends that the living wage for woman should not be based on the needs of possible dependents, but on her individual needs, and it is hard to reconcile his theory on women's wages with his well-known stand on a living wage (*i. e.*, a family wage) for men.

10 J. Duboc, *Fünfzig Jahre Frauenfrage*, pp. 123 sqq.; S. Gerok, *Frauenabende*, Stuttgart 1896, pp. 96 sqq.; C. Hilty, *Frauenstimmrecht*, Bern 1900, pp. 63 sqq.

a) The political emancipation of women consists in their admission to public life and political government on equal terms with men. Its first demand is that all women, or at least all not subject to husbands and at the head of their own household, shall be given the right to vote and hold office. This demand militates not only against an almost universal tradition, but likewise against the natural relationship existing between husband and wife, woman's innate modesty, and epecially her weakness of allowing emotion rather than reason to guide her conduct.[11]

One of the latest and ablest Catholic writers on the subject of feminism, Msgr. Joseph Mausbach, says on this head: "It seems venturesome to pronounce either for or against the political emancipation of women. Though custom and our traditional notions of female character, virtue, and beauty seem to argue in favor of keeping her out of the political arena, yet it is difficult to say on what principle of Moral Theology we shall deny her the exercise of such a general civic right. Modern civilization brings so many surprises that an unconditional veto or prophecy in such questions would be hazardous, even though one may personally hold the opinion that in the long run the female sex is likely to lose more than it can possibly gain by participation in politics." [12]

This opinion was shared by the late Archbishop J. L. Spalding, of Peoria, who, in his essay, "Woman and Education," in answer to the question: "Should women vote?" says: "The rule of the people is good only when it is the rule of the good and wise among the people, and of these women, in great numbers, are part. The

11 Cfr. V. Cathrein, S. J., *Moralphilosophie,* Vol. II, 5th ed., pp. 432 sqq.; Idem *Die Frauenfrage,* 3rd ed., pp. 171 sqq.

12 J. Mausbach, *Die Stellung der Frau im Menschheitsleben,* p. 54.

leadership of the best comes near to being the leadership of God. But the question of the suffrage for women is grave; it is one on which an enlightened mind will long hold judgment in suspense. Does not political life, as it exists in our democracy, tend to corrupt both voters and office-seekers? Is it not largely a life of cant, pretence, and hypocrisy, of venality, corruption, and selfishness, of lying, abuse, and vulgarity? Do not public men, like public women, sell themselves, though in a different way? Is the professional politician, the professional caucus-manipulator, the professional voter, the type of man we can admire or respect even? The objection so frequently raised, that political life would corrupt women, has at least the merit of a certain grim humorousness. Could it by any chance make them as bad as it makes men? To tell them they are the queens of the home, to whom the mingling with plebeians is degrading, is an insult to their intelligence. We have foresworn kings and queens, both in private and in public life, and at home women are, for the most part, drudges. What need is there of a hollow phrase when the appeal to truth is obvious?

> 'A servant with this clause
> Makes drudgery divine;
> Who sweeps a room as for thy laws,
> Makes that and the action fine.'

Active participation in political life is not a refining, an ennobling, a purifying influence. Is it desirable that the half of the people to which the interests of the home, of the heart, of the religious and moral education of the young are especially committed, should be hurled into the mælstrom of selfish passion and coarse excitement? The smartness and self-assertiveness of American women are already excessive; they lack repose, serenity, and self-

restraint. If they rush into the arena of noisy and vulgar strife, will not the evil be increased? Will not the political woman lose something of the sacred power of the wife and mother? Are not the primal virtues, those which make life good and fair, and which are a woman's glory,—are they not humble and quiet and unobtrusive? The suffrage has not emancipated the masses of men, who are still held captive in the chains of poverty and dehumanizing toil. Do women themselves, those, at least, in whom the woman soul, which draws us on and upward, is most itself, desire that the vote be given them? But whatever our opinions on the subject may be, let us not lose composure. 'If a great change is to be made,' says Edmund Burke, 'the minds of men will be fitted to it, the general opinions and feelings will draw that way. Every fear, every hope will forward it; and then they who persist in opposing the mighty current will appear rather to resist the decrees of Providence itself than the mere designs of men. . . .'" [13]

b) In consequence of their social emancipation women have been admitted to practically all professions and occupations, and we now have women ministers of religion, doctors, university professors, druggists, lawyers, judges, police officers, streetcar conductors, post-office clerks, etc., etc. The opening of new occupations for the female sex is morally permissible and economically desirable in so far as these occupations are compatible with woman's nature, especially with her duties as wife and mother, and with public morality. As regards in particular her admission to the higher branches of learning, it should be noted that while woman on the whole is not inferior to man in mental endowment, she lacks physical

13 J. L. Spalding, "Woman and Education" in *Means and Ends of Education*, 5th ed., Chicago, 1909, Ch. IV, pp. 108 sqq.

endurance and capacity for the learned professions, and though it may be desirable to have female physicians for women patients, they are neither an ethical nor a hygienic necessity.

Generally speaking, therefore, we may outline the Catholic attitude by saying that female emancipation is reasonable and just only in so far as it does not break down the bulwarks erected around women by their own nature and by the moral law.

It is praiseworthy for women to desire a higher education and to test their strength in essaying difficult tasks. But this endeavor involves a great danger. For woman to strive forward and upward is ennobling and conducive to moral progress only if she is inspired, not by pride and selfishness, but by a feeling of grave responsibility and a desire to co-operate with man in solving the great tasks imposed upon humanity. Without injustice to anyone we can say that the efforts of women to attain equality with men are not always inspired by such noble motives, but quite often by an inordinate desire for freedom, notoriety, and unlimited opportunities to do what they please. This tendency is incompatible with the Christian ideal of womanhood and entails danger to good morals. In regard to the purity of family life, the education of children, and modesty and chastity, woman will always be a paramount factor, but the most wholesome influence in these important matters is not as a rule exercised by those representatives of the fair sex who publicly insist on absolute equality for the sexes.[14]

It goes without saying that where women have been granted the suffrage, Catholic women are in duty bound to use the vote honestly and intelligently, and the

14 J. Pachali, *"Die moderne Frauenbewegung u. die christliche Sittlichkeit,"* in *Glaube und Wissen,* Stuttgart 1910, p. 76.

same rules of conduct apply to them in this matter as to men.[15]

READINGS.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 639 sqq.—A. Rösler, C.SS.R., *Die Frauenfrage,* pp. 8 sqq., —A. Rösler and J. de Rochay, *La Question Féministe,* Paris 1899, pp. 22 sqq.—F. X. Godts, C.SS.R., *Le Féminisne,* pp. 172 sqq.—G. Ratzinger, *Die Volkswirtschaft,* 2nd ed., pp. 490 sqq.—M. von Nathusius, *Die Mitarbeit der Kirche an der Lösung der sozialen Frage,* 3rd ed., Leipsic 1904, pp. 345 sqq.—J. E. Ross, *Christian Ethics,* pp. 31, 412 sqq.—C. S. Devas, *Political Economy,* pp. 78 sqq.

15 Cfr. Ross, *Christian Ethics,* pp. 412 sqq.

SECTION 3

THE DUTIES OF PARENTS TO THEIR CHILDREN

If a marriage is blessed with children,[1] parents and children together form the social community called family. The bond which unites its mem-

1 Even aside from religious motives, a child has a "right," as it were to brothers and sisters. A recent non-Catholic writer (Mary Vida Clark) says on this subject "If the plural is in all cases too much to demand, at least one 'sibling' should be a minimum concession. The liability of the only child to the danger of being 'spoiled' has been long and widely recognized. The expectation of moral life which can be calculated for an only child is about equal to that of the proverbial 'minister's son.' But it is not only in the strictly moral sphere that to be an only child is an extra hazardous occupation. Our ultra-modern psychologists and psychiatrists are calling attention to previously unrecognized mental risks, and warning us that this way madness lies. The first decade of life is no longer pictured as a garden of delight, but as a field of battle where 'invisible armies clash by night.' It is in these infantile conflicts ('conflict' is the technical word) that those wounds of the spirit are acquired, which, after festering in 'the unconscious' for a few decades, break out in the neuroses and psychoses of middle life. One of our leading Freudians has produced a learned monograph entitled *The Only or Favorite Child,* a signpost pointing out the *descensum Averno* down which these preordained victims of infant damnation are pushed by the fatuous and doting parents who are called by an inscrutable Providence to do the work. According to this school of thought, the superior opportunity that the only child is afforded by his freedom from domestic competition is that of ending his days in an insane asylum—and being able to be a paying patient. But even without these lurid lights on this dark subject, we can feel our way to the sensible realization that an only child is at best a forlorn and unnatural object, arbitrarily and unjustly deprived of the company of his peers, and condemned to excessive and demoralizing association with rude-mannered adults, constantly intruding their unwelcome attentions, and making the

bers is love, not by virtue of some secondary or artificial arrangement, but by the voice of nature and divine Revelation.[2] The duties of parents to their children are manifold and various. St. Paul sums them up in the passage: "And you, fathers, provoke not your children to anger, but bring them up in the discipline and correction of the Lord." [3]

unfortunate an object of ridicule to the more happily situated groups of brothers and sisters to be observed in the outer world. To fail to conform to the requirements of this abnormal environment, where one is the only one of his kind in his world, makes for immediate misery; and to conform, it now appears, results in even more serious disaster in the future. A cruel dilemma indeed for a guileless enterer in life's handicap! And yet the senile speak of 'childhood's happy hours'! Consider next the child's right to respectful treatment. The rudeness exhibited by most adults in their relations with children is fully recognized only by the victims themselves, who are too forbearing and well-mannered to speak out in their own defense. The child is a very serious-minded individual, engaged in a life and death struggle for existence and growth and knowledge, in a world ill adapted to meet his needs, to which he must by increasing and herculean effort learn to conform. Self-respect and consideration for others demand the repression, so far as possible, of external indications of the conflict going on within the soul; but to the combatant, conscious of the struggle, life and himself are very serious propositions. To the adult, however, whose growing pains have ceased and been forgotten with the conclusion of his stunted development, the child, because of a certain meretricious outer appearance of calm, seems for some inscrutable reason an object of hilarity, to be treated jocosely when not subjected to autocratic domination and suppression. A sense of humor, in cases where it exists at all, is a development of maturity, a thing not born but made. The child still regards life as real and earnest. Yet his serious observations on his discoveries in the natural and supernatural world are treated by thick-headed grown-ups as funny sayings to be bandied about for public entertainment. The child, naturally sensitive to ridicule, soon learns to keep to himself his queries and his discoveries, painfully and laboriously acquiring knowledge by putting two and two together through æons of time." *North American Review*, Vol. 216, No. 3 (Sept. 1922), pp. 407 sqq.

2 Is. XLIX, 15; Matth. VII, 9–11; Luke XI, 11–13; cfr. John XVI, 21.—J. P. Gury, S. J., *Comp. Theol. Mor.*, Vol. I, n. 378.—Tit. II, 4; cfr. Matth. X, 37; Luke XIV, 26.

3 Eph. VI, 4.

1. This bringing up,—*education* as we are wont to call it,—comprises a threefold care on the part of the parents, namely,

a) *Care for the physical life and well-being of their children.* Parents are bound to protect their children against everything that is apt to prove injurious to their life and health. In positive terms this means that they must provide for them whatever they need to grow up and develop their physical powers. This duty begins long before the child is born, at the moment of its conception in the maternal womb. Hence parents commit a mortal sin if they deliberately induce abortion or expose their children to any other grave danger to life and health, either before or after birth.

b) In regard to *support* (*victus*), the first duty devolves upon the mother. She is bound to give the new-born infant the food which nature has provided for it, and if she is unable to do so, either because of ill health or for some other weighty reason, she must provide an adequate substitute for *mother's milk.* After the infant is weaned, father and mother must share in his care by providing him with food, shelter, and clothing in accordance with their station in life, until the child is able to take care of himself.[4]

4 Col. III, 21. Cfr. Gury, *Compend. Theol. Mor.*, I, n. 379–381.

The mother's duty of *nursing* her babies obliges under pain of mortal sin, and it is a grievous mistake to think that compliance with this duty injures a woman's health or mars her youthfulness. Under normal conditions the contrary is true: neglect to nurse her baby is apt to induce serious disturbances in the physical organism of the mother. It is foolish to regard nursing as immodest or degrading. But if a mother is really incapable of nursing her infant, which is nowadays unfortunately but too often the case, in consequence of unnatural habits continued through many generations, the best substitute that can be had is a *wet nurse*. In engaging a wet nurse preference should be given to healthy married women of good repute, not only for moral reasons, but also because unmarried mothers are more likely to transmit diseases.[5]

A relatively large proportion of infants nowadays die of neglect. They are mostly the offspring of mothers who entrust their little ones to strangers while they, compelled by poverty, go out to work. This is a deplorable evil, which can not be effectively combatted by the erection of *foundling asylums*. Such institutions, even when conducted according to the most approved rules of Christian charity, cannot supply to the foundlings what their nature demands and their mothers refuse to give them. A certain monarch once suggested as an appropriate motto for a foundling asylum the words: *"Ici on fait mourir les enfants*—Here infants are made to die." There is more truth than poetry in this inscription. Foundling asylums are not without their merits, but statistics show that the majority of the children entrusted

5 Lam. IV, 3.—Gury, *op. cit.*, I, n. 381.—H. Noldin, S. J., *Summa Theol. Mor.*, Vol. II, p. 310; H. Muckermann, S.J., *Der biologische Wert der mütterlichen Stillpflicht*, Freiburg 1918; J. Antonelli, *Medicina Pastoralis*, Vol. II, pp. 10 sqq.

to them either die prematurely or become degenerate in after life.

If possible, *orphans* should be entrusted to good Christian families, rather than to asylums, where they usually feel as if they were in prison. Still a well conducted orphanage is superior to a private home in which the children are allowed to grow up wild or are exploited for profit.

Experience teaches that men often abandon girls whom they have seduced and that the *young unmarried mothers* are unable to support their offspring with their meagre earnings. This condition of affairs is responsible for many crimes, such as abortion, child-murder, and suicide. Relief should be furnished by the State or municipality by erecting institutions for the proper care of such mothers and their children. Institutions for receiving *girls about to become mothers* are also a desideratum, especially in our large cities, and can do much good, not only by relieving such poor unfortunate creatures of worry, but likewise by leading them back to virtue. To accomplish this double end it is advisable that the girls should remain in these institutions for some time both before and after delivery. The charges should be moderate, and poor girls should be received and treated gratis. Upon being dismissed, the unmarried mother should be given an opportunity to leave her baby in a home connected with the institution and herself be provided with safe lodging if she is obliged to go out to work.[6]

Motherhood insurance (against the risks of maternity) is a good thing because it secures to mothers proper care during and after confinement and enables them to nurse their babies if they are physically able to do so.

6 F. X. Linsenmann, *Lehrbuch der Moraltheologie*, p. 646.—P. G. Kammerer, *The Unmarried Mother, A Study of Five Hundred Cases*, Boston 1918.—C. Bruehl in the *Homiletic and Pastoral Review*, Vol. XXIII (1923), no. 10.

c) Parents are further bound to aid their children in *choosing a vocation* or *profession* and in preparing them for it. This means, under modern conditions, that they have to accumulate a certain amount of money in order to enable the children to equip themselves properly for the battle of life. St. Paul expressly teaches that parents should lay up treasures for their children, not children for their parents.[7] St. Thomas states the reason as follows: "Since a father stands in the relation of a principle, and his son in the relation of that which is from a principle, it is essentially fitting for a father to support his son, and consequently he is bound to support him not only for a time, but for all his life, and this is to lay by. On the other hand, for the son to bestow something on his father is accidental, arising from some momentary necessity, wherein he is bound to support him, but not to lay by as for a long time beforehand, because naturally parents are not the successors of their children, but children of their parents." [8]

7 2 Cor. XII, 4.

8 *Summa Theol.*, 2a 2ae, qu. 101, art. 2, ad 2: *"Quia pater habet rationem principii, filius autem habet rationem a principio existentis, ideo per se patri convenit, ut subveniat filio, et propter hoc non solum ad horam debet ei subvenire, sed ad totam suam vitam, quod est thesaurizare. Sed quod filius aliquid conferat patri, hoc est per accidens ratione alicuius necessitatis instantis in qua tenetur ei subvenire, non autem thesaurizare quasi in longinquum, quia naturaliter non parentes filiorum, sed filii parentum sunt successores."*—Gury, *Comp. Theol. Mor.*, I, n. 382: *"Tenentur tandem parentes filiis procurare statum in quo honeste iuxta conditionem suam aliquando vivere possint. Hinc graviter peccant:* 1.

Parents are not, however, bound to go to extraordinary pains, or to impose privations upon themselves, in order to enrich their children. The best they can do for them is to fit them for a position where they can take care of themselves.

It is wrong for parents to spend money without stint to help along their sons and at the same time to make no provision for their unmarried daughters.

Just how much or how little a child needs to be properly provided for, cannot be definitely determined by any general rule. Often the sons of poor families become prosperous, nay wealthy, whereas the pampered scions of the rich grow poor. "To surround the young with what they ought themselves to achieve," says Archbishop Spalding, "is to enfeeble and corrupt them. Happy is the poor man's son, who, whithersoever he turns, sees the obstacles rise to challenge him to become a man; miserable the children of the rich, whose cursed-blessed fortune is an everpresent invitation to idleness and conceit. O mothers, you whose love is the best any of us have known, harden your sons and urge them on, not in the race for wealth, but in the steep and narrow way wherein, through self-conquest and self-knowledge, they rise toward God and all high things." [9]

Qui diligentiam saltem mediocrem non adhibent, ut acquirant bona, ex quibus liberos convenienter sustentent et futuro statui eorum provideant; iuxta illud Apostoli (2 Cor. xii, 14): *Non debent filii parentibus thesaurizare, sed parentes filiis; 2. Qui artem statui congruentem aliudve genus decenter vivendi liberos non docent nec docendos curant; 3. A fortiori qui pigritia neglegentia potationibus comessationibus lusibus negotiis graviter imprudentibus rem familiarem dissipant; 4. Qui absque causa legitima dotem filiae convenientem pro matrimonio ineundo aut ingressu in religionem obstinate denegant."*

[9] J. L. Spalding, *Means and Ends of Education*, 5th ed., Chicago 1909, pp. 124 sq.

A good education, or a trade or profession, is worth more than a large fortune. "He who hath a trade hath an estate," says Poor Richard.

Parents are not obliged to go to the limit of their ability in providing for their children. For a good and appreciative child they will naturally do more than for a wicked and ungrateful one. "Parents cannot do too much for good children," says Lessing; "but if a foolish father deprives himself of the necessaries of life to support a wayward son, love degenerates into folly."

Among the duties of parents, says a recent writer on ethics, is that of training their children so that they will avoid sloth and pleasure-seeking, and teaching them to work diligently, to employ their time in useful pursuits, to be methodic and frugal, and to save money. To many a thriftless and prodigal parent might be applied the words of Homer's Lycophron, when he says of the father of Mestra, that "he hath consumed everything." They consume, *i. e.*, waste everything, and not only fail to provide for their children, but abandon them to material and moral ruin. Pauperism with all its misery too often has its source in gross parental neglect.

2. The most important duty which parents have towards their children is to educate and train them in the fear of God.[10]

10 Gury, *Comp. Theol. Mor.*, I, n. 383: *"Tenentur praecipue parentes procurare educationem spiritualem. Ratio est, quia homo praeter illud esse materiale seu corporale, quod cum ceteris animalibus commune habet, donatur a Deo anima rationali ac nobilissima ad divinitatis ipsius imaginem, et est creatus, ut in Deum seu ultimum finem supernaturalem tendat; proinde a parentibus maxime in hunc finem instrui et dirigi debet. Ideo enim matrimonium ad dignitatem sacramenti evectum est, ut nata proles in Christo renascatur et ad vitam aeternam praeparetur. Hinc Apostolus* (1 Tim. V, 8) *ait: Si quis suorum et*

a) Children need *instruction* (*doctrina*), that they may acquire proficiency in the things a man needs to know in order to be enabled to take care of himself when he grows up and, in his turn, to provide for his own offspring. The most necessary and elementary branches of knowledge are the so-called three R's, *i. e.,* reading, writing, and arithmetic, commonly conveyed in elementary or grammar schools. To these Catholics are wont to add a fourth "R,"—namely religion. Hence parents, who are unable to instruct their children themselves, are bound to send them to a good Catholic school. If a boy is fit for and aspires to a higher education or profession, parents should cheerfully provide the means to achieve his ambition, but compulsion should never be exercised in the choice of a profession or occupation.

It would be a travesty of liberty and a suppression of rights if parents were prohibited from choosing their own schools for their children, where the latter will receive the kind of instruction that is in keeping with the parents' outlook on life and their religious beliefs. Right gives

maxime domesticorum curam non habet, fidem negavit et est infideli deterior. Ad hanc vero educationem requiritur: 1. Doctrina; 2. Correctio; 3. Exemplum."—St. Augustine, *De Bono Coniug.*, c. 17, n. 19: *"In illis enim carnale est ipsum desiderium filiorum; in illis autem spirituale erat, quia sacramento illius temporis congruebat. Nunc quippe nullus pietate perfectus filios habere nisi spiritualiter quaerit: tunc vero ipsius pietatis erat operatio, etiam carnaliter filios propagare."* (Migne, *P. L.,* XL, 386 sq.).

way to might and liberty becomes tyranny when education is made a monopoly of the State and when thoughts and ideas are shaped and controlled by a party in power, by "vested" interests, or a hostile majority.

When a child shows signs of a *vocation for the priesthood or for the religious life,* the parents should encourage it, but they are not allowed to interfere with the child's freedom of choice.[11]

Parents who let a child grow up without giving him all the opportunities for mental development which they can command, or who oppose the child's desire for a higher education and forcibly try to keep him in ignorance, commit a grievous sin, especially if they could give him the desired opportunities without great sacrifices on their part. A boy who shows a talent for a higher profession should not be denied an education on the plea that his help is needed at home and the family would have to deny itself certain luxuries if he quit working.

In all questions pertaining to education parents should above all remember that they may under no circumstances entrust their children to institutions in which faith or morals are exposed to direct danger.[12]

b) So much for instruction. Of equal importance is *moral and religious training* (*disciplina*). It must comprise the intellect, the will,

11 *Conc. Trid.,* Sess. XXV, *De Regular. et Monial.,* c. 16–18; St. Thomas, *Summa Theol.,* 2a 2ae, qu. 104, art. 5.

12 J. L. Spalding, *Means and Ends of Education,* pp. 151 sqq.; Linsenmann, *Lehrb. der Moraltheol.,* p. 647. Cfr. Gury, *Comp. Theol. Mor.,* I, n. 386; Lehmkuhl, *Theol. Mor.,* Vol. I, n. 937 sqq.

and the heart. The child must be instructed in its duties to God, to himself, and to his fellowmen, and taught to acquire a firm and enduring tendency toward moral goodness, in order that he may acquire true culture and nobility of character and attain to "the age of the fullness of Christ." [13] Consequently, parents are in duty bound to instruct their children at an early age in those moral and religious truths which are necessary for salvation, to accustom them to the daily practice of religion, to protect them against the danger of seduction arising from servants or companions, and particularly to train them in obedience and respect to authority.

Some parents fancy that in sending their children to a religious school they have discharged all their obligations towards them. Even in secular quarters apprehension is growing on account of the remissness of parents at home in the matter of supplying a background for the teaching in the schools. Miss Sarah Louise Arnold, dean emeritus of Simmons College, recently registered the following complaint: "The modern American home is no longer filling its former place in the education of the child. We are leaving to the school the responsibilities of the home. Education is not for the school alone. Where can re-

13 Eph. IV, 13.—Cfr. Brother Azarias, *Phases of Thought and Criticism*, Boston 1896, pp. 72 sqq.

sponsibility and co-operation be taught, if not at home? The home is the environment that is natural for a proper training for responsible citizenship. But to-day our homes too often lack the permanence that made the homes of a generation ago so fundamental in training our present generation. To-day our homes, too, often lack the books and the chores and the duties toward the family."

Still graver consequences than those which follow the state of affairs set forth by Miss Arnold are produced by faulty home environment and false standards of life.

"In many a Catholic home," says a current Catholic writer, "the inspiring and helpful teaching given to the children at school not only remains unencouraged, but principles and modes of action are stimulated which are directly opposed to what the child has learned while under the care of Catholic teachers. What is the result of this twofold standard, presented almost daily to the impressionable character of the young persons? They will be apt to follow the example, and to adopt the views of their elders at home. After all, the adolescent boy or girl understands quite well that it is not the school, but the home where father and mother and friends and neighbors meet, which really counts. In the minds of the young it is the home, and not the school that pre-

sents a sample of what goes on in the great world around. The child looks upon the school as an episode to be gotten through with as soon as possible, in order to start real life."

When it becomes necessary to *correct* or *punish* their children, parents must proceed with prudence and moderation. Punishment, especially corporal chastisement, when applied in anger or to excess, produces discouragement, bitterness, and contempt of authority, and is apt to prove an obstacle rather than a help to education. "Fathers, provoke not your children to anger, but bring them up in the discipline and correction of the Lord." [14]

No partiality should ever be shown, because it is a hindrance to the right development of character.

The best and most effective means of training a child, especially in religion, is *good example*.[15]

14 Eph. VI, 4; cfr. Col. III, 21; Prov. XIII, 24; XXIII, 13 sq.; Ecclus. XXII, 6; XLII, 5.—Gury, *Comp. Theol. Mor.*, I, n. 385.

15 St. Jerome, *Epist.*, 107 (*al.* 7), n. 9: *"Te habeat magistram, te rudis imitetur (miretur) infantia. Nihil in te et patre suo videat, quod si fecerit, peccet. Mementote vos parentes virginis, et magis eam exemplis doceri posse quam voce. . . . Nunquam absque te procedat in publicum. . . . Vigiliarum dies et solemnes pernoctationes sic virguncula nostra celebret, ut ne transverso quidem ungue a matre discedat."* (Migne, *P. L.*, XXII, 875).—St. Gregory the Great, *Regula Past.*, p. 3, c. 4 (*al.* 28): *"Isti [patres] discant, quomodo etiam commissis sibi exempla bene vivendi exterius praebeant. Scire etiam praelati debent, quia si perversa unquam perpetrant, tot mortibus digni sunt, quot ad subditos suos perditionis exempla transmittunt. Unde necesse est, ut tanto se cautius a culpa custodiant, quanto per prava quae faciunt, non soli moriuntur, sed aliorum animarum, quas pravis exemplis destruxerunt, rei sunt."* (*P. L.*, LXXVII, 54).

Parents are, therefore, under a particular obligation to fulfill their religious duties regularly and conscientiously. "You will give [your daughter] very much if you give her nothing but your [good] example," says Seneca; and Horace: "The virtue of good parents is a rich dowry." [16]

"Education," says Archbishop Spalding, "is always the result of *personal influence.* A mother, a father in the home, a pure and loving heart at the altar, a true man or woman in the school, a noble mind uttering itself in literature, which is personal thought and expression, these are the forces which educate. Life proceeds from life, and religion, which is the highest power of life, can proceed only from God and religious souls. Not by preaching and teaching, but by living the life, can we make ourselves centres of spiritual influence." [17]

The dread which prevents so many parents from being strict with their children is not a sign of a humane disposition, but rather a proof of mental unsteadiness, moral weakness, and lack of principle. They hesitate to impose a law upon their children because they themselves have no law to guide them, and because father and mother proceed on different principles, or have no principles at all. *Parental discipline,* to be effective, must be

16 Seneca, *De Consol. ad Helviam* XVIII, 8: *"Multum illi dabis etiamsi nihil dederis praeter exemplum."*—Horace, *Carm.,* l. III, c. 24, 21: *"Dos est magna parentium virtus."*

17 *Means and Ends of Education,* p. 125.

concerted, reasonable, moderate, and uniform. Though the father is stricter than the mother, both should communicate to each other their experiences and observations and never let the children notice any difference of opinion that may arise between them. There should be no partiality in the treatment of children, yet, on the other hand, each should be dealt with according to his or her individual character, with due regard to his or her idiosyncrasies, and all should be made to know and feel that they are equally dear to their progenitors. That parents love those of their children who cause them trouble with a special tenderness seems to be natural, but to treat the younger children more leniently than the older is neither just nor prudent.[18]

Though instruction in matters of sex may be necessary in some cases, it cannot be regarded as a general duty incumbent upon all parents, for three reasons: First, not all are able to give this sort of instruction effectively; secondly, a great many children, in consequence of temperament, education, or environment, do not require such instruction, at least not in childhood; third, it is not at all certain that instruction in matters of sex always produces the desired effect, but experience teaches that, on the contrary, this sort of enlightenment, no matter how well-intentioned, often entails great danger.[19] For very good reasons drawn from personal experience many moralists, pedagogues, and parents oppose this new fad. The words of the noble Bishop Sailer[20] remain as true to-day as when they were spoken nearly a century ago:

18 Linsenmann, *Moraltheologie*, pp. 647 sqq.

19 Cfr. F. Damian, *"Eine aktulle Frage,"* in the *Theologisch-prakt. Quartalschrift*, of Linz, 1906, pp. 750 sqq.; F. Tischler, *Prinzipielle Gesichtspunkte zur sexuellen Aufklärung, ibid.*, 1908, pp. 783 sqq.: Th. J. Gerard, *The Church and Eugenics*, London 1921, pp. 61 sqq.

20 On Sailer see the *Cath. Encyclopedia*, Vol. XIII, p. 328.

"The lure of curiosity and forbidden desire, aided by the imagination, often overcomes the trained reason of the adult man; what will they do to the boy whose reason is so very weak and whose imagination is so immensely strong? Hence sexual instruction must not be the rule. Whether it may be employed beneficially in exceptional cases, must be left to the judgment of the wise and prudent lover of youth.[21] Consequently, there can be no duty in this matter for parents except in individual and exceptional cases, when such instruction appears necessary, and even then only to the extent in which it is necessary. The general rule is that parents should instruct their children in the unchangeable principles of Christian morality, inculcate especially the necessity of watchfulness and prayer against the temptations of the flesh, train the children to be chaste and modest, and instil into them at an early age fear of God and a deep aversion for the sins against the Sixth Commandment.[22]

Father Thomas J. Gerrard, a very competent authority, says that parents and teachers have to steer between Scylla and Charybdis in this matter of sex instruction:

"The difficulty arises from this, that there is an intimate nervous connection between the imagination and the bodily functions; so that knowledge may cause keen physical sensations and they in turn may become a source of temptation and sin. If the knowledge is gained before the mind can rightly grasp the motives for self-control or the will acquire the habit, the removal of ignorance may mean the loss of innocence as well. Whereas if when knowledge is due it is withheld, an unhealthy curiosity

21 Schmetz, *Das Glück im Heim*, p. 191. Cfr. F. W. Foerster, *Sexualethik*, 3rd ed., pp. 183 sqq.

22 L. Auer, *Die Einführung in ein richtiges Geschlechtsleben*, Donauwörth 1907, pp. 22 sqq.; M. Gatterer and F. Krus, *Die Erziehung zur Keuschheit*, 2nd ed., Innsbruck, 1910 pp. 4 sqq. (English edition by Van der Donckt).

may seek gratification in wrong ways or be suppressed by an equally unhealthy prudery.

"Once the necessity of this instruction is admitted, the solution of the problem must take the form of an answer to the questions—Who? When? and How? *Who* is the proper person to give the instruction? As the parent stands in the closest relation to the child and is primarily responsible for its moral education, it is clearly the parental duty to see that the offspring gets the requisite knowledge neither too early nor too late. It is never too early to begin to train children in habits of modesty as regards themselves and others, but the time will come when that training must be supplemented and confirmed by a disclosure of the rational and religious grounds for those habits. Of the parents, the mother is normally the best fitted in herself and in her opportunities to undertake this duty, but if she for some reason cannot do it, she is bound to provide an efficient substitute.

"As to the *when* and *how*, clearly the disclosure must be gradual. As generally it is the phenomenon of birth that first arouses the child's curiosity, the mother should be prepared to use the analogy of reproduction amongst irrational animals, such as cats and rabbits, to illustrate such part of the human process as concerns herself. Answers to some questions may readily be deferred for a time, especially if the child leads a sheltered life, but false information should never be given. God's share in the process, both in ordaining it and actually creating the rational soul, should be emphasized, so as to show its essential sacredness, and, whilst it is described as too intimate to be discussed with others, care must be taken not to let the child think that there is anything improper in the function itself. Not until much later, when the occurrence of the phenomena of puberty seems likely to

arouse youthful curiosity again, should the part the father takes be indicated. Then it is time that the growing youths should learn other reasons, besides God's stern prohibition, for preserving continence, such as reverence for the purity of others and the personal and social harm of indulgence.

"So much for what we may call home instruction, normally indispensable if the moral character is to be duly developed. But it should always be accompanied or followed up by that training in religion by which young minds are best enlightened and young wills best strengthened against sexual sin. The explanation of the Sixth and Ninth Commandments, if given clearly and fully, should, by indicating precisely what is wrong, and the penalties which are assigned by God to transgression, suffice to preserve any Catholic child from unconsciously forming habits of vice. Unfortunately, as every confessor can testify, owing to a mistaken reticence on the part of parents or to the difficulties attending class instruction in so delicate a subject, many children are allowed to grow up and to leave school inadequately or even wrongly informed as to what is and what is not sinful. Such ignorance is widespread outside the Catholic Church, but, with Catechism instruction as a basis of enlightenment, it should be impossible for a Catholic child to be misinformed on so vital a matter. It is the grave duty of those entrusted with the task of teaching the Catechism to see that the nature of the obligations imposed by these two commandments, and the reason for them, are clearly understood by their pupils. This obviously cannot be done by questioning in public, both because of the nature of the subject and the different degrees of precocity exhibited even by children of the same age and standing. For this reason, detailed class instruction in this matter is

strongly to be deprecated. The state of the child's knowledge is best ascertained by judicious questioning in private with the view to removing misapprehensions, and correcting, if need be, both laxity and scrupulosity of conscience."

Closely akin to this question, and equally important, is when and how to tell the young of the harmful physical effects of sexual indulgence. It is a pressing question to-day when the looseness of morals, induced by the Great War, has greatly increased the incidence of venereal disease. The medical profession are seriously alarmed at the spread of this racial poison, which affects the innocent as well as the guilty, and are casting about for means of checking its ravages. One of these means is the diffusion of knowledge both as to the painful and health-shattering character of *veneric diseases,* and as to the methods by which they can be cured once they have been incurred. "In the conveyance of this information," says Fr. Gerrard, "the moralists (and genuine eugenics put morality foremost) see a double effect: the revelation of the terrible nature of the infection is clearly a deterrent, whilst the indication of a ready means of recovery tends to make the sinner more reckless. However, the need of promoting public health and of protecting the innocent from loathsome complaints, outweighs the possible danger of making the way of the transgressor less hard; and, the crisis being what it is, no Catholic moralist would refuse to second the efforts of the health authorities, both to warn the public and to heal, as speedily as may be, those who do not heed the warning.

"Again, the risk attending public instruction of adults must necessarily be run, if only because of the impossibility of conveying the knowledge otherwise. Members of non-Catholic bodies, deprived of explicit moral teach-

ing and the counsels of the confessional, must be treated thus *en masse* and appealed to mainly on physical and social grounds. But we hold out against such instruction being given publicly in schools, and we insist on the religious motive as being the highest and most permanent in fighting this great evil. Religion, as we said above, is the only eugenic force in the world capable of realizing the final aim of eugenics." [23]

All further explanations may, as a rule, be postponed to the time immediately preceding marriage.[24] Innocence of mind and heart has this great advantage that it turns away the imagination of the adolescent boy or girl from the sexual organs and their functions, which in not a few cases is of greater advantage than the most profound knowledge concerning these things.

A Catholic lay writer on these subjects says that the instruction which he and his bride received from an experienced and pious priest immediately before marriage, was of greater benefit to them than all professed instruction in matters of sex could possibly have been. Given in the confessional, such instructions are frequently even more effective, because they turn the attention to the sacred purpose of Matrimony at a time when and in a place where the mind is most receptive to such things.

READINGS.—Sporer-Bierbaum, *Theol. Mor.,* Vol. I, 2nd ed., pp. 794 sqq.—Elbel-Bierbaum, *Theol. Mor.,* Vol. I, 3rd ed., pp. 730 sqq.—Reuter-Lehmkuhl, *Neoconfessarius,* pp. 166 sqq.—J. M. Sailer and J. Baier, *Uber Erziehung für Erzieher,* Freiburg 1899, pp. 160 sqq.—D. Dupanloup, *L'Éducation,* Paris 1850.—W. Becker, S.J., *Die christl. Erziehung oder Pflichten der Eltern,* 3rd ed., Freiburg 1907.—F. A. Göpfert, *Moraltheologie,* Vol. II, pp. 419.

[23] *The Church and Eugenics,* Appendix.

[24] See the excellent specimen instruction for bridal couples by Dean J. H. Keim in Dr. F. Schulze's *Pastoral Theology,* 3rd ed., St. Louis 1923, Appendix II.

—T. Slater, S.J., *A Manual of Moral Theology,* Vol. I, pp. 274 sqq.—Th. Meyer, S.J., *Inst. Iuris Nat.,* Vol. II, pp. 101 sqq.—J. E. Ross, *Christian Ethics,* pp. 386 sqq.—H. Noldin, S.J., *Summa Theol. Mor.,* Vol. II, pp. 307 sqq.—F. Walter, *Die sexuelle Aufklärung der Jugend,* Donauwörth 1907.—T. J. Gerrard, *The Church and Eugenics,* London 1921, pp. 61 sqq.—A. Vermeersch, S.J., *De Castitate,* nn. 134, 172, 175, 196, 199, 242.

SECTION 4

THE DUTIES OF CHILDREN TO THEIR PARENTS

The Decalogue contains a special commandment for children, namely, "Honor thy father and thy mother, that thou mayest be long-lived upon the land which the Lord thy God will give thee." [1] This precept was expressly re-inculcated by Jesus Christ: "For God said: Honor thy father and mother." [2] St. Paul calls attention to the fact that this "is the first commandment with a promise" attached to it.[3]

The precept to honor father and mother, therefore, is not merely based on the law of nature, but it is a positive divine law, given for the purpose of materially lightening the duties of parents.[4]

The term "honor" [5] signifies not only the love which every man must show to every other man,[6]

1 Ex. XX, 12; cfr. Deut. V, 16; Tob. IV, 3; Ecclus. III, 3. 5–8; VII 29.—Cfr. Ehrlich *Randglossen zur hebr. Bibel,* I, 344.

2 Matth. XV, 4; cfr. Mark VII, 10.

3 Eph. VI, 1–3; cfr. Col. III, 20.

4 St. Augustine, *Quaest. in Heptateuch.,* l. I, qu. 153: *"Est etiam ordo naturalis in hominibus, ut serviant feminae viris et filii parentibus, quia et illic haec iustitia est, ut infirmior ratio serviat fortiori."* (Migne, *P. L.,* XXXIV, 590).—*Cat. Rom.,* P. III, c. 5, qu. 2.

5 τιμᾶν, *honorare.*

6 Lev. XIX, 18; Matth. XIX, 19; XXII, 39.—Love for his parents is part of the child's natural equipment and therefore is not particularly emphasized in Revelation.

but that filial respect which has its natural foundation in the dependence of youth upon age, in a feeling of personal inferiority, and in addition, that *pietas* which children owe to their parents as the authors of their existence and their educators.[7]

The duties that flow from this virtue are three: reverence, love, and obedience.

1. *Reverence (reverentia sive timor reverentialis)* is a feeling of deep respect, mingled with awe and affection. Children owe reverence to their parents as long as they live, nay, beyond the grave. It should cause them to bear with their parents even if their demands sometimes exceed the right measure, to spare their feelings, and in their conduct towards them to avoid whatever might savor of contempt. Sins which are but venial when committed against others, may be mortal if committed against parents because they violate reverence.[8]

7 Lev. XIX, 3; *Cat. Rom.*, P. III, c. 5, qu. 7; Gury, *Comp. Theol. Mor.*, I, n. 368: *"Filii erga parentes specialissimâ obstringuntur obligatione. Tria autem officia parentibus a filiis exhibenda sunt titulo pietatis, amor videlicet, reverentia et oboedientia. Triplicem enim respectum habent parentes ad filios, nempe ratione causae, ratione praeeminentiae et ratione regiminis. Consequenter filii eos amare debent ut suae existentiae causam, revereri ut superiores eisque tanquam rectoribus a Deo legatis oboedire."*

8 Cfr. Gen. XLVI, 29; Tob. X, 9 sqq.—Sporer-Bierbaum, *Theol. Mor.*, Vol. I, 2nd ed., 793: *"Omne odium, iniuria, irreverentia, contemptus, quae in alium proximum censetur mediocris vel levis, gravis est in parentes, et quae censetur gravis in alium proximum, est summa in parentes (excipitur sola materia furti). Ratio sumitur ex ordine graduum, quia post Deum primus gradus coniunctionis ad nos est parentum adeoque odium, iniuria et irreverentia ipsis illata semper ceteris paribus gravior est quam*

Children sin against the reverence they owe to their parents if they deny them those signs of respect which are demanded by custom or treat them with indifference or neglect. Contempt, mockery, or maltreatment, which would be sinful towards strangers, are a much more grievous sin when committed against parents. To mistreat one's parents or to curse them was punished by death under the Old Law. Reverence forbids us to reveal the faults of our parents. Children should not sue their parents in court, unless higher considerations of justice or public welfare are at stake, and it is a wise provision of the law which exempts them from testifying against their progenitors. The duty of reverence must not be disregarded even when it becomes necessary to treat parents with physical violence, for instance, in self-defence, when they are insane.[9]

2. Children must, secondly, *love* their parents. This love is not identical with the charity every man must entertain for all his fellowmen, but a special duty, based upon the fact that children are indebted to their parents, under God, for their life and for innumerable material and spiritual benefits. This filial love should not only be deeply rooted in the heart (*amor affectivus*), but it should be manifested outwardly in acts of assis-

illata aliis proximis etiam propinquis."

9 Linsenmann, *Lehrb. der Moraltheol.*, pp. 651 sq. Cfr. St. Thomas, *Summa Theol.*, 2a 2ae, qu. 75, art. 2: "*Gravissimum est irridere Deum et ea quae Dei sunt* (Is. XXXVII, 23,); *deinde secundum locum tenet irrisio parentum* (Prov. XXX, 17)." —Cfr. Gury, *Comp. Theol. Mor.*, I, n. 372 sq.; Lehmkuhl, *Theol. Mor.*, I, n. 949.

tance and protection (*amor effectivus*).[10] Children are in duty bound to support their parents when the latter become unable to support themselves.

This support is, of course, to be gauged in each case by the child's ability. When a man has to strain every nerve to provide for his own family, or to pay his creditors, he cannot be held to contribute to the support of his parents except in case of urgent need. But even when children have become wealthy, they are not obliged to support their parents on a scale essentially higher than that to which their station in life entitles the latter. Whatever children do for their parents, however, they should do in such a manner that the latter can feel that the assistance given them is not a cold matter of duty, but inspired by genuine affection. Parents have a right to demand this of their children in view of what they have done for them. The consequences of lack of filial affection are graphically portrayed in Shakespeare's "King Lear." [11]

3. The duty of filial *obedience* (*obedientia filialis*) is coextensive with parental authority, and hence comprises whatever is subject to that

10 Ecclus. III, 14–18; VII, 29 sq.; Prov. XIX, 26.—Gury, *Comp. Theol. Mor.*, I, n. 369: *"Filii parentes amare debent amore tum interno ipsos pio et benevolo cordis affectu prosequentes, tum externo omne malum et iniuriam notabilem ab ipsis propulsantes nec non externae benevolentiae signa eis exhibentes iisque in necessitate constitutis pro facultatibus subvenientes. Constat de iure naturali. Quamvis igitur genitores nostri defectus quantumvis graves habeant et quovis modo erga nos egerint, eis tamen debemus vitam et conservationem, quod omnium sane beneficiorum maximum est."*

11 Linsenmann, *Lehrb. d. Moraltheol.*, pp. 652 sq.

authority, *i. e.,* all matters of education and domestic government.

a) For minors living under the parental roof the obligation of obeying their parents is a grave one in all important matters. But not all violations of this duty are mortal sins; quite often the guilt is diminished by youthful thoughtlessness, imprudence, or lack of judgment.[12] In the case of children who have reached the age of maturity, however, it is nearly always a mortal sin if they refuse to obey their parents in matters that concern their eternal salvation or are of vital importance for the preservation of peace and good order within the family circle. The sin of disobedience is aggravated by pride, obstinacy, and hypocrisy. Grown-up children may, of course, raise objections against parental commands or orders, but they should present their reasons with respect and deference, and be ready to obey, no matter what the final decision may be.[13]

b) The duty of filial obedience ceases to bind when parents command their children to do something that is bad in itself or a proximate occasion of sin, for Jesus says, "He that loveth father or mother more than me, is not worthy of me." [14]

12 Ecclus. III, 1; Eph. VI, 1; Col. III, 20.—Gury, *op. cit.,* I, n. 374 sq.

13 *De Benefic.,* l. III, c. 38.

14 Matth. X, 37; Luke XIV, 26; Acts IV, 10; V, 29.—St. Augustine, *Enarr. in Ps.,* LXX, s. I, n. 2: *"In ea re sola filius non debet oboedire patri suo, si aliquid pater ipsius iusserit contra Dominum Deum ipsius. Neque enim debet irasci pater, quando ei praeponitur Deus.*

Nor does the duty of obedience bind a child in the *choice of a vocation* or state of life. Parents have no right to compel their children to embrace a vocation which would require them to renounce marriage or the religious life. If they fear that they will be exposed to extreme want through the marriage of a child, or his reception into a religious order, they may demand that the one or the other act be postponed, and in that case the child should not resist. Children may enter a religious order against the will and without the knowledge of their parents if they are unable to overcome parental resistance and there is no danger that the parents will suffer want. Minors, however, should be kept back as long as possible, since in their case the matter is not urgent and their vocation as yet uncertain.[15]

Ubi autem hoc iubet pater, quod contra Deum non sit, sic audiendus est, quomodo Deus, quia oboedire patri iussit Deus." (Migne, *P. L.*, XXXVI, 875).—IDEM, *Sermones*, 100 (*al.* 7 *de Verbis Domini*), c. 1, n. 2: "*Honorandus est pater, sed oboediendum est Deo; amandus est generator, sed praeponendus est creator.*"—*Ibid.*, c. 2: "*Amate parentes, sed praeponite Deum parentibus.*" (*P. L.*, XXXVIII, 603).

15 St. Alphonsus, *Theol. Mor.*, l. III, n. 335: "*Hic advertendum, filios non teneri oboedire in iis quae pertinent ad statum eligendum. Hinc graviter peccant parentes, qui eos cogunt, etiam indirecte invitos, ad vitae statum elegendum, sive religiosum sive clericalem sive coniugalem, vel contra, si eos iniuste retrahant, etiam sine vi vel fraude, a statu religioso, clericali vel coniugali sine iusta causa, quia parentibus specialiter incumbit consulere bono spirituali filiorum. Unde si filius se sentiat a Deo vocatum ad religiosum vel clericalem statum et advertat parentes iniuste impedituros, consultius agat rem eos celando divinamque voluntatem exequendo. Dictum est autem iniuste, nam secus dicendum foret, si parentes ob iustam causam contradicerent, puta si remanerent in necessitate vel si alias extingueretur nobilissima familia, ut ait Elbel* (*Theol. Mor.*, P. III, n. 539). *In hoc tamen secundo casu puto non teneri filium ob id suam vocationem de-*

The duty of obedience ceases to bind, lastly, when a child marries, becomes of age or enters a religious order or congregation. Children who continue to dwell under the parental roof after they have attained their majority, remain subject to parental authority, and this includes sons who are in clerical orders, but have no benefice and are supported wholly or in part by the family.

If a conflict arises between the demands of the parents and those of the children, the presumption is in favor of the parents because they are supposed to have a riper judgment, and it is, generally speaking, not wise to support children who resist their parents. On the other hand it cannot be denied that parents are sometimes unreasonable in the demands they make upon their children. In the same Epistle in which he inculcates the duty of filial obedience St. Paul says: "Fathers, provoke not your children to anger."[16] Parents should always remember that they rear their children not for themselves, but for society, and they must not refuse to make the sacrifices demanded of them on this account. They

serere."—Cfr. H. Busembaum, S. J., *Medulla Theol. Mor.*, l. III, tr. 3, c. 2, dub. 1, n. 4: *"Tenetur proles alere parentes egentes, adeo ut, si in gravi necessitate aliter iuvari non possint, teneatur manere in saeculo (nisi tamen in hoc illi certum vel certe valde probabile periculum salutis immineret), et si religionem sit ingressus, teneatur egredi et iuvare parentes, dummodo eorum necessitas eius professionem antecesserit."* —*Ibid.*, n. 5: *"Si vero necessitas post professionem superveniat et extrema sit, tenetur egredi, petita prius (licet non obtenta) venia. Si autem sit gravis tantum, in qua utcunque possint vivere, non tenetur quidem, potest tamen egredi, si praelatus permittat. Quo casu tenetur, inquantum non obstat suo intento, deferre habitum et observare substantialia religionis, at postquam parentibus subventum est, redire tenetur."* (Tornaci 1876, I, 161).— Cfr. S. Thomas., *S. Th.*, 2a 2ae qu. 101, a. 4; Gury, *Comp. Theol. Mor.*, I, n. 377; Lehmkuhl, *Theol. Mor.*, I, n. 946–948.

16 Eph. VI, 4.

may not hinder their children from choosing a vocation or establishing a family of their own, merely because they themselves would have to live less comfortably in consequence.

The children, on the other hand, must remember that they should not take any important step in life without the consent and blessing of their parents and that if they do so without a just cause, they forfeit an important condition of happiness. Parents have a right to be consulted in regard to their children's choice of a vocation, and often, when the children are moved by passion or restiveness, the will of the parents represents the counsel of mature wisdom. It may justly be assumed that the son or daughter who marries with due regard to the wishes of his or her parents will be better off than he or she who parts from them in anger and contracts a marriage which they disapprove.

As there are children who, because of mental or bodily defects, cannot take care of themselves, but remain a charge on their parents as long as they live, so, too, it may happen that a child must renounce an independent position in order not to expose his parents to penury. Circumstances may render this an imperative duty, and if the sacrifice is made in the right spirit, it is as much a virtue as making a religious profession.[17]

Those who take the place of parents, especially *guardians* and *teachers,* and, in general, *superiors,* participate in their rights as well as duties.[18] The rights and duties

17 Linsenmann, *Moraltheologie,* p. 651.—The question whether there are between parents and children mutual duties of justice in addition to those of *pietas* and the other virtues distinct from justice (*e. g.,* gratitude, veracity, etc.) is controverted among theologians.

18 Sporer-Bierbaum, *Theol. Mor.,* Vol. I, 2nd ed., 806: *"His [magistris] discipuli tenentur amorem, reverentiam et oboedientiam seu diligentiam praestare in his quae ad eorum curam pertinent. Peccata ergo discipulorum sunt: iniusta indignatio, contemptus, irritatio prae-*

of guardians are, as a rule determined by positive law.[19]

Sponsors must see to it that their godchildren are raised in the Catholic religion and lead a good Christian life in conformity with the promises made at Baptism. This is a grave obligation which ceases only with death.[20] Baptism gives rise to a spiritual relationship between the sponsor and the baptized person. If one is sponsor by proxy, the principal, not the proxy, contracts spiritual relationship with the *baptizandus*.

Sponsors are absolved from all obligation if it can be prudently presumed that the godchild is properly taken care of by his parents or guardians.[21]

The *baptizing priest* should see to it that the canonical regulations concerning sponsors are duly observed, and instruct the sponsors in regard to the obligations they assume, and also with respect to the spiritual relationship they contract.

It is a bad sign if scholars and pupils do not remember gratefully their teachers and others who have contributed towards the formation of their character and their success in life. As true gratitude is a splendid virtue, so ingratitude is a detestable vice, and if it is formal, *i. e.*, coupled with downright contempt for the favors received

ceptoris, inoboedientia in pertinentibus ad eorum curam, v. g. studiis, convicia, contumeliosa verba aliaeque iniuriae illatae; quamvis in his pueri plerumque levitate, imprudentia, passione a mortali excusentur, ut non ad infernum, sed ad fornacem tantum damnandi sunt. Econtra magistri et praeceptores tenentur suis discipulis amorem, doctrinam, correctionem, exemplum. Patet ex natura eorum officii. Quorum proinde peccata sunt alia, indignationes, obiurgationes iniustae vel indiscretae, neglegens incauta falsa doctrina, omissio correctionis debitae, scandala pusillorum: vae illis! Ad plura adhuc tenentur magistri seu praeceptores academici, quae ipsi ex statutis ac iure communi noverint."

19 *C. I. C.*, can. 765 sqq.; cfr. this *Handbook*, Vol. II, p. 121.

20 Cfr. *Conc. Trid.*, Sess. XXIV, c. 2, *De Ref. Matr.*; *C. I. C.*, can. 769.

21 J. B. Ferreres, *Comp. Theol. Mor.*, Vol. II, p. 184; cfr. St. Alphonsus, *Theol. Mor.*, l. IV, n. 1476.

or for those who bestowed them, it is a mortal sin, unless the matter involved is so small as to diminish the guilt (*parvitas materiae*).[22]

READINGS.—*Catechismus Romanus*, P. III, c. 5.—St. Thomas, *Summa Theol.*, 2a 2ae, qu. 101–105.—Sporer-Bierbaum, *Theol. Mor.*, Vol. I, 2nd ed., 784 sqq.—Elbel-Bierbaum, *Theol. Mor.*, Vol. I, 3rd ed., 719 sqq.—J. B. Hirscher, *Die christliche Moral*, Vol. III, 5th ed., pp. 539 sqq.—V. Cathrein, S. J., *Moralphilosophie*, Vol. II, 5th ed., pp. 433 sqq.—W. Becker, S.J., *Die Pflichten der Kinder und die christl. Jugend*, 2nd ed., Freiburg 1898.—T. Slater, S.J., *A Manual of Moral Theology*, Vol. I, pp. 270 sqq.—J. E. Ross, C. S. P., *Christian Ethics*, pp. 385 sqq.

22 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 106 sq.; Sporer-Bierbaum, *Theol. Mor.*, Vol. I, 2nd ed., 806 sqq.—Cfr. Pseudo-Augustine, *Append. Serm.*, 265 (*al.* 215, *De Temp.*), n. 2: *"Filios quos in baptismo excipitis, scitote vos fideiiussores pro ipsis apud Deum exstitisse. Et ideo tam illos, qui de vobis nati sunt, quam illos quos de fonte excipitis, semper castigate atque corrigite, ut caste et iuste et sobrie vivant. Et vos ipsi ita agite, ut si vos filii vestri imitari voluerint, non vobiscum in igne ardeant, sed simul vobiscum ad praemia aeterna perveniant."* (Migne, *P. L.*, XXXIX, 2238).—IDEM, *De Rect. Cath. Conversat.*, n. 4 (*P. L.*, XL, 1171).

SECTION 5

THE MUTUAL DUTIES OF BROTHERS AND SISTERS AND OTHER RELATIVES, AND OF MASTERS AND SERVANTS

1. The Mutual Duties of Brothers and Sisters.—While the family converges towards unity in the parents, it diverges into variety in the children. The natural tie that binds brothers and sisters together is not their individuality, but their common relation towards their parents and towards the family to which they belong. For this reason the bond in question is much weaker and entails fewer duties than the one which unites parents and children.

Broadly speaking, brothers and sisters are bound to love one another more dearly than other human beings and to help one another, not only in urgent, but also in grave and ordinary necessities.[1]

These duties, however, vary even between brothers and sisters. Older brothers and sisters have more duties towards younger brothers and sisters because they are the natural representatives of the parents. If they marry, however,

1 Ps. CXXXII, 1–3; Ecclus. *Mor.*, l. III, n. 340 (ed. Gaudé, XXV, 1 sq.—St. Alphonsus, *Theol.* I, 606).

their duties to their younger brothers and sisters must in case of collision give way to the duties they owe to husband or wife, and children. As a rule, too, brothers have more onerous duties towards their sisters than *vice versa*. Thus, if an unmarried sister would probably be exposed to want in case her brother joined a religious order, he would have to give up his intention, or at least postpone its execution, until satisfactory provision could be made for the dependent sister. If the parents are dead and an older brother or sister takes their place in rearing the younger children, he or she has a right to demand from them, in all that pertains to unity and peace of the family, the same respect and obedience that they would show to the parents, were they alive. Uncharitableness, enmity, and revenge among children of the same parents is doubly detestable and sinful.[2]

2. The Mutual Duties of Relatives.—When a family broadens out into several, we have what is called *relationship*. Descent from the same ancestors is a bond that unites relatives into a natural group. This bond grows weaker in proportion to the distance of the descendants from their common ancestor. Consequently, the duties of relatives to one another are

2 See this *Handbook*, Vol. I, pp. 215 sq.; cfr. O. v. Marmerie, *Die Familie*, pp. 331 sqq.

difficult to define. We may lay it down as a general rule, however, that when different relatives are simultaneously in need, the nearer should be given precedence over the more distant. For the rest, the duties which relatives have towards one another are obligations of charity rather than of justice, except when there is question of an inheritance *ab intestato*.[3]

Lack of affection for one's relatives is a sign of selfishness and involves a gross violation of Christian charity. On the other hand, love of one's relatives should never be allowed to degenerate into unjust partiality or lead to the neglect of higher vocational duties.[4] *Nepotism, i. e.,* favoritism extended to relatives, near or distant, in the bestowal of offices, in fact every species of undue discrimination in favor of relatives, especially in governmental patronage, is detrimental to private and public morality because it leads to violations of duty, unjust preference, and other vices.

It belongs to the allied sciences of politics and political economy to weigh the advantages and disadvantages of the patriarchal or feudal system of society as against its opposite extreme, the atomization of society and property into minute

3 Sporer-Bierbaum, *Theol. Mor.*, Vol. I, 2nd ed., 803.

4 Matth. VIII, 21 sq.; XII, 46 sqq.; Luke IX, 59 sqq.

particles. Both tendencies involve grave social dangers.

Another danger, which affects morality very closely, is *inbreeding, i. e.,* marrying among near relatives. It is apt to result in physical degeneration and the transmission of undesirable characteristics, notably mental defects, from ancestors to descendants. Though the physiological consequences of inbreeding are undeniable, it will be well to put the case against it on moral grounds, because *heredity* is still a largely unexplored subject. Among the moral dangers of inbreeding are too great intimacy between near relatives, the exclusion of new blood, and the cultivation of a spirit of social pride and exclusiveness that is detrimental to society at large. Marriages between near relatives as a rule are not contracted for love, but for extrinsic, conventional reasons, and hence involve an undue restriction of individual liberty. It is difficult to determine the exact limits to which parental authority may go in controlling the rights of children, though quite evidently he who shares in the advantages of family life, ought to submit to a certain amount of compulsion for the benefit of the whole.[5]

5 St. Augustine, *Enarr. in Ps.*, 127, n. 12: *"Vult Dominus, ut consanguinitatibus terrenis praeponamus Deum. Defer patri, quia pater est; defer Deo, quia Deus est. Generavit te pater accommodando carnem suam; creavit te Deus adhibendo omnipotentiam suam. Ne*

Unequal treatment of relatives is not immoral so long as the personal rights of each are respected and no one is compelled to choose a vocation, to marry or to abstain from marriage, to sacrifice his religious convictions, or hindered in the performance of his duties. But when love of one's kin leads to clannishness, to undue pride, and to the exploitation of outsiders, it is sinful and apt to foment social disturbances.[6]

The duties arising between *masters* and *domestic servants* from the express or implicit contract existing between them, are duties of justice in the strict sense,[7] neglect of which involves sin and

irascatur pater, quum Deus illi praeponitur; immo gaudeat sibi tantum deferri, ut ille inventus esset, qui ei deberet praeponi." (Migne, *P. L.*, XXXVII, 1685).

6 St. Augustine, *De Civ. Dei*, l. XV, c. 16, n. 1: "*Quum genus humanum post primam copulam viri facti ex pulvere et coniugis eius ex viri latere marium feminarumque coniunctione opus haberet, ut gignendo multiplicaretur, nec essent ulli homines nisi qui ex illis duobus nati fuissent, viri sorores suas coniuges acceperunt; quod profecto quanto est antiquius compellente necessitate, tanto postea factum est damnabilius religione prohibente. Habita est enim ratio rectissima caritatis, ut homines quibus esset utilis atque honesta concordia, diversarum necessitudinum vinculis necterentur nec unus in uno multas haberet, sed singulae spargerentur in singulos ac sic ad socialem vitam diligentius colligendam plurimae plurimos obtinerent. Pater quippe et socer duarum sunt necessitudinum nomina. Ut ergo alium quisque habeat patrem, alium socerum, numerosius se caritas porrigit.*"—*Ibid.*, n. 3: "*Copulatio igitur maris et feminae, quantum attinet ad genus mortalium, quoddam seminarium est civitatis.*" (Migne, *P. L.*, XLI, 457, 459).—St. Thomas, *S. th.*, 2a 2ae, q. u. 154, art. 9; 3a, Suppl., qu. 54, art. 3: "*Per accidens finis matrimonii est confoederatio hominum et amicitiae multiplicatio, dum homo ad consanguineos uxoris sicut ad suos se habet. Et ideo huic multiplicationi amicitiae praeiudicium fieret, si aliquis sanguine coniunctam uxorem duceret, quia ex hoc nova amicitia per matrimonium nulli accresceret.*"—On endogamy and exogamy see Cronin, *The Science of Ethics*, Vol. II, pp. 451 sqq.—Cfr. Linsenmann, *Moraltheol.*, pp. 654 sq.

7 Ecclus. XXXIII, 31; Eph. VI, 5–9; Col. III, 22–24; IV, 1; 1 Tim.

the duty of making restitution. Besides the duties flowing directly from the contract, there are other duties, which bind masters to provide for the spiritual and, to a certain extent and more remotely, also for the temporal welfare of their servants. They should not only make it possible for their servants to comply with their religious duties, but exhort and persuade them to avoid proximate occasions of sin. Servants, on their part, should be faithful to their employers, honor them, promote their interests, obey them in all legitimate things, and keep the secrets entrusted to them. As a rule it is a mortal sin for a servant to make statements which are apt to cause his employer considerable loss or annoyance.

In the ideal social order every servant would be enabled sooner or later to become his own master and to govern others, service would merely be a condition of, and a preparation for, the government of others, and no one would command who had not previously learned to obey.

READINGS.—Sailer, *Handbuch der christl. Moral,* Vol. III, pp. 194 sqq.—Jocham, *Moraltheologie,* Vol. III, pp. 336 sqq.—H. Noldin, *Summa Theol. Mor.,* Vol. II, pp. 314 sqq.—A. Lehmkuhl, S. J., *Theol. Mor.,* Vol. I, pp. 554 sq.—Th. Meyer, S.J., *Inst. Iuris Nat.,* Vol. II, pp. 112 sqq.—F. A. Göpfert, *Moraltheologie,* Vol. II, pp. 29 sq., 427 sqq.

VI, 1 sq.; Tit. II, 1 Pet. II, 18 sq. —Elbel-Bierbaum, *Theol. Mor.,* Vol. I, 3rd ed., 740 sqq.; Gury, *Comp. Theol. Mor.,* Vol. I, n. 392–394.

CHAPTER III

THE CHRISTIAN STATE

SECTION 1

NATURE AND PURPOSE OF THE STATE

1. As marriage gives rise to the family, so the family is the nursery of the State,[1] which may be defined as a *perfect and self-sufficient society, consisting of many families, united together under a common ruler and governed by the same laws, for the attainment of complete life and welfare of all the members.*

The State owes its existence to the natural needs of men as social beings, which compel them to unite in larger (political) communities. For neither as an individual nor as a family member is a man able to supply even his own urgent needs.

1 Cicero, *De Offic.*, l. I., c. 17: *"Quum sit hoc naturâ commune animantium ut habeant libidinem procreandi, prima societas in ipso coniugio est, proxima in liberis, deinde una domus, communia omnia. Id autem est principium urbis et quasi seminarium reipublicae. Sequuntur fratrum coniunctiones, post consobrinorum sobrinorumque, qui quum una domo iam capi non possint, in alias domos tamquam in colonias exeunt. Sequuntur connubia et affinitates, ex quibus etiam plures propinqui. Quae propagatio et soboles origo erit rerum publicarum. Sanguinis autem coniunctio et benevolentia devincit homines et caritate."*

Now, as it would be impossible to preserve order in the family without some higher (paternal or parental) authority, so, too, the permanent cohabitation of many families would not be possible without a common leader.[2] History teaches that in matter of fact there is not and never was a nation or State that wholly lacked political organization, no matter what form of public policy it adopted.

But the State is not only a spontaneous outgrowth of sheer natural necessity, it is at the same time a free and voluntary product of human intelligence. It furnishes a fruitful soil for countless moral relations which are sustained and regulated by the ideas of social order, right, and justice,—ideas implanted by the Creator Himself in the minds and hearts of men. Accordingly the State or civil society is not a purely human invention, but instituted by God; for, as St. Paul says, "there is no power but from God, and those that are, are ordained of God." [3] "Because no society can hold together unless some one be over all,"—writes Leo XIII in his famous encyclical *"Immortale Dei,"*—"directing all to strive ear-

2 Prov. XI, 14.—St. Thomas, *Summa Theol.*, 1a, qu. 96, art. 4: *"Socialis vita multorum esse non posset, nisi aliquis praesideret, qui ad bonum commune intenderet. Multi enim per se intendunt ad multa, unus vero ad unum. Et ideo Philosophus dicit, quod quandocunque multa ordinantur ad unum, semper invenitur unum ut principale et dirigens."*

3 Rom. XIII, 1; cfr. Prov. VIII, 15 sq.

nestly for the common good, every civilized community must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its author. Hence it follows that all public power must proceed from God. For God alone is the true and supreme Lord of the world, to whom everything without exception must be subject, and whom everything must serve: so that whosoever holds the right to govern, holds it from one sole and single source, namely, from God, the Sovereign Ruler of all." [4]

Yet, though political power is from God, Divine Revelation has not prescribed any particular form of government,[5] but leaves men free to choose whichever form they prefer, and civil society is a moral entity precisely by the fact that it is based in part upon a free agreement, that it is sustained by the voluntary co-operation of its members, and that the individual finds within it ample scope for

4 Encycl. *"Immortale Dei,"* Nov. 1, 1885: *"Quoniam non potest societas ulla consistere, nisi si aliquis omnibus praesit efficaci simulque movens singulos ad commune propositum impulsione, efficitur, civili hominum communitati necessariam esse auctoritatem, qua regatur: quae, non secus ac societas, a natura propteraque a Deo ipso oriatur auctore. Ex quo illud consequitur, potestatem publicam per se ipsam non esse nisi a Deo. Solus enim Deus est verissimus maximusque rerum dominus, cui subesse et servire omnia, quaecunque sunt, necesse est; ita ut quicunque ius imperandi habeant, non id aliunde accipiant nisi ab illo summo omnium principe Deo."*— Cfr. J. A. Ryan, *The State and the Church,* pp. 2 sq., 26 sqq.

5 Rom. XIII, 1–7; 1 Pet. II, 13–19. Cfr. Linsenmann, *Moraltheol.,* pp. 621 sqq.; G. v. Hertling, *Kleine Schriften,* pp. 41 sqq., 61 sqq., 91 sqq., 470 sqq.; M. Cronin, *The Science of Ethics,* Vol. II, pp. 557 sqq.; J. A. Ryan, *op. cit.,* p. 28 sq.

free activity. This liberty, however, like human liberty in general, is not merely legal, derived from positive law, but has its root in the divine will, and, ultimately, in the eternal and imperishable ideas of right and justice as they exist in God.

The influence of Christianity on the development of political life shows itself especially in this that the Church of Christ inculcates a higher conception of justice and goodness. She is the authorized interpreter of the natural law. And since the human race is not intended to work out its destiny exclusively on this earthly planet, but has a truly transcendental aim and purpose,[6] the State does not contain its ultimate purpose within itself, in other words, it is not absolute, but merely a means to an end. This end is to help humanity reach its temporal and eternal destiny. "Nature did not fashion society with the intent that man should seek in it his last end, but that in it and through it he should find suitable means to attain to his own perfection." [7]

2. The *end or purpose of the State* may be briefly described as the promotion of the public welfare (*salus sive prosperitas publica*). This

6 Mark VIII, 36 sq.; Luke IX, 25; X, 42.—St. Augustine, *Confess.*, l. I, c. 1: *"Tu [Domine] excitas, ut laudare te delectet, quia fecisti nos ad te, et inquietum est cor nostrum, donec requiescat in te."* (Migne, *P. L.*, XXXII, 661).

7 Leo XIII, Encycl. *"Sapientiae Christianae,"* Jan. 10, 1890: *"Non ob hanc causam genuit natura societatem, ut ipsam homo sequeretur tamquam finem, sed ut in ea et per eam adiumenta ad perfectionem sui apta reperiret."*

means that the State must by proper laws and institutions insure the preservation of good morals and the proper government of families, inculcate respect for religion, enforce the demands of justice, secure the prosperity of business, trade, and commerce, etc., because upon the promotion of these things the welfare and happiness of civil society mainly depends.[8]

The object of the State, therefore, is the preservation of civil society on the basis of justice and order. Still law and order are not the last and highest purpose, but means for the attainment of a still higher one, which is contained in the very destiny of man himself, namely, *culture* and *civilization* in the fullest and most perfect sense of the term. The State must create such conditions of law and order as are suitable to a nation's state of culture and apt to lead the people to a still higher plane of morality. Law and order must be directed toward good morals. Hence it belongs to the State not only to protect its citizens against external and internal enemies, and to protect private property, but likewise to prevent and punish all public violations of morality and to promote every form of true culture and civilization,—education, religion, science and art.[9]

The State has its natural basis in *nationality*. But History shows that a nation (in the strict sense) can very well comprise several States, and that a State may comprise people of different nationalities. Both the undue

8 Cfr. Rom. XIII, 3 sq.—Cathrein, *Moralphilosophie*, Vol. II, 5th ed., pp. 525 sqq.—Leo XIII, Encycl. *"Immortale Dei,"* Nov. 1, 1885: IDEM, Encyclical letter *"Rerum Novarum,"* March 15, 1891.

9 J. A. Ryan, *The State and the Church*, pp. 195 sqq.; Linsenmann, *Moraltheologie*, p. 620.

suppression of national aspirations and the undue exaltation of the principle of nationality are moral defects and therefore illicit.[10]

READINGS.—F X. Linsenmann, *Lehrbuch der Moraltheologie*, pp. 619 sqq.—V. Cathrein, S. J., *Moralphilosophie*, Vol. II, 5th ed., pp. 462 sqq.—IDEM, *Die Staatsgewalt und ihre Grenzen*, Freiburg i. B. 1882.—G. v. Hertling, *Recht, Staat und Gesellschaft*, Kempten 1906.—B. Seidel, *Die Lehre des hl. Augustinus vom Staate*, Breslau 1909.—M. Cronin, *The Science of Ethics*, Vol. II, pp. 461 sqq., 507 sqq.—J. A. Ryan, *The State and the Church*, N. Y. 1922, pp. 62 sqq., 195 sqq., 221 sqq.—Th. Meyer, S.J., *Inst. Iuris Nat.*, Vol. II, pp. 241 sqq., 266 sqq., 303 sqq.—J. E. Ross, C.S.P., *Christian Ethics*, pp. 395 sqq., 433.—P. Tischleder, *Ursprung und Träger der Staatsgewalt nach der Lehre des hl. Thomas und seiner Schule*, M. Gladbach 1923.

10 *Ibid.*, pp. 615 sqq.—Cfr. Stöckl, *Das Christentum*, Vol. II, pp. 389 sqq.; W. Frind, *Das sprachliche und sprachlich-nationale Recht in polyglotten Staaten und Ländern*, Mayence 1899; W. Haidegger, *Der nationale Gedanke in Lichte des Christentums*, 2nd ed., Brixen, 1902; A. Vermeersch, S. J., *Quaestiones de Iustitia*, 2nd ed., pp. 6 sqq.

SECTION 2

THE DUTIES OF PUBLIC OFFICIALS

1. The highest government official in a country, whether his title be emperor, king, or president, is the representative of God, appointed for the purpose of enforcing justice and promoting the common welfare.[1] St. Thomas [2] describes his duties in a classical passage as threefold: "(1) *Ut in subiecta multitudine bonam vitam instituat;* (2) *Ut institutam conservet,* (3) *Ut conservatam ad meliora promoveat.*"

The *institutio bonae vitae* comprises: (a) that the people live in unity of peace; (b) that, united by the bonds of peace, they be directed in doing good; (c) that by the industry and foresight of their ruler they be provided plentifully with the necessaries of life.[3]

The *conservatio bonae vitae implies*: (a) a just administration by, and a proper succession of, officials; (b) proper laws and precepts, re-

1 Rom. XIII, 3 sq.

2 *De Regimine Principum,* l. I, c. 15.

3 *Ibid.*: "a) *Ut multitudo in unitate pacis constituatur,* b) *ut multitudo vinculo pacis unita dirigatur ad bene agendum,* c) *ut per regentis industriam necessariorum ad bene vivendum adsit sufficiens copia.*"

wards to encourage civic virtue and punishments to deter the people from wrongdoing; (c) safety of the commonwealth against exterior and interior enemies.[4]

The *promotio bonae vitae* implies: (a) correcting crimes, misdemeanors, and serious faults; (b) supplying the things that are necessary for the welfare of the nation, and (c) introducing indispensable and advisable reforms.[5]

The principal duty of the regent is to dispense justice to all. Hence he must never violate justice, or permit others to violate it; he must render to each what is his due, reward or punish all according to their deserts, combine firmness with paternal kindness and charity, and be ever mindful of the account he will one day have to render to God.[6]

"The right to rule," says Leo XIII, "is not necessarily bound up with any special mode of government. It may take this or that form, provided only that it be of a nature to insure the general welfare. But whatever be the nature of the government, rulers must always bear in mind that God is the paramount Ruler of the world, and must

4 *Ibid.*: "a) *Cura de successione hominum et substitutione illorum, qui diversis officiis praesunt;* b) *ut suis legibus et praeceptis, poenis et praemiis homines sibi subiectos ab iniquitate coerceant;* c) *ut multitudo subiecta contra hostes tuta reddatur.*"

5 *Ibid.*: "a) *in singulis quae praemissa sunt, si quid inordinatum est, corrigere;* b) *si quid deest, supplere;* c) *si quid melius fieri potest, perficere.*"—Cfr. Aug. Lehmkuhl, *Theol. Mor.*, Vol. I, 11th ed., n. 952.

6 Ps. II, 10, 12; Wisd. I, 1; VI, 2–4; VI, 7; cfr. Jas. II, 13.

set Him before themselves as their exemplar and law in the administration of the State. . . . They, therefore, who rule, should rule with even-handed justice, not as masters, but rather as fathers, for the rule of God over man is most just, and is tempered always with a father's kindness. Government should, moreover, be administered for the well-being of the citizens, because they who govern others possess authority solely for the welfare of the State. Furthermore, the civil power must not be subservient to the advantage of any one individual or of some few persons, inasmuch as it was established for the common good of all. But if those who are in authority rule unjustly, if they govern overbearingly or arrogantly, and if their measures prove hurtful to the people, they must remember that the Almighty will one day bring them to account, the more strictly in proportion to the sacredness of their office and the pre-eminence of their dignity." [7]

Least of all is a ruler permitted to employ his power against God, *i. e.*, to the detriment of religion;—on the contrary, it is one of his first and most sacred duties to protect and

[7] Encyclical *"Immortale Dei,"* Nov. 1, 1885: *"Ius imperii per se non est cum ulla reipublicae forma necessario copulatum: aliam sibi vel aliam assumere recte potest, modo utilitatis bonique communis reapse efficientem. Sed in quolibet genere reipublicae omnino principes debent summum mundi gubernatorem Deum intueri, eumque sibimet ipsis in administranda civitate tanquam exemplum legemque proponere. . . . Debet igitur imperium iustum esse, neque herile, sed quasi paternum, quia Dei iustissima in homines potestas est et cum paterna bonitate coniuncta. . . . Quod si, qui praesunt, delabantur in dominatum iniustum, si importunitate superbiave peccaverint, si male populo consuluerint, sciant sibi rationem aliquando Deo esse reddendam, idque tanto severius, quanto vel sanctiore in munere versati sint vel gradum dignitatis altiorem obtinuerint."* Cfr. J. A. Ryan, *The State and the Church*, pp. 3, 26 sqq.

foster religion, inasmuch as fidelity to God and to His holy law is a necessary condition of the temporal no less than of the spiritual welfare and prosperity of nations as well as individuals.[8]

"All who rule," says Leo XIII, "should hold in honor the holy name of God, and one of their chief duties must be to favor religion, to protect it, to shield it under the credit and sanction of the laws, and neither to organize nor enact any measure that may compromise its safety. This is the bounden duty of rulers to the people over whom they rule." [9]

2. Public officials are the organs of the supreme ruler and entrusted with the duty of promoting the welfare of the people in their respective spheres, whether these be large or small.[10]

The statement is frequently made in the United States that public officials are merely *public servants*. This, says Dr. Ryan, is incorrect. "They are, indeed, the servants of the people, but they are also something more. Inasmuch as their function is that of public service, they may properly be regarded as public servants; inasmuch as

8 *Ibid.*, pp. 4 sqq., 29 sqq. Cfr. Ecclus. XIX, 18; 1 Tim. IV, 8.

9 Encyclical *"Immortale Dei": "Sanctum oportet apud principes esse Dei nomen; ponendumque in praecipuis illorum officiis religionem gratia complecti, benevolentia tueri, auctoritate nutuque legum tegere, nec quippiam instituere aut decernere, quod sit eius incolumitati contrarium. Id et civibus debent, quibus praesunt."* (Ryan, *op. cit.*, pp, 4 sq., 29 sqq.)

10 St. Thomas, *Summa Theol.*, 2a 2ae, qu. 67–71; Lehmkuhl, *Theol. Mor.*, Vol. I, 11th ed., n. 960–987.

their position gives them the authority to enact laws which are morally binding on the people, they are not servants, but masters. Their character as public servants does not depend upon the fact that they are elected by the people; for hereditary kings are likewise bound to serve the common welfare. In a republic the members of legislatures may in a special sense be regarded as servants of the people, whenever they are instructed by the electors to carry out certain political policies. Their promise to pursue this course creates a particular responsibility to the people, and renders their position analogous to that of servants or agents. Nevertheless, they are masters and rulers when they enact the legislation necessary to carry out the policies to which they have committed themselves." [11]

One of the primary duties of public officials, according to the same writer, is "to possess an adequate knowledge of what constitutes the common welfare and of the means by which it is best promoted. This obligation is disregarded by a large proportion of those who seek public office. Men who are otherwise conscientious assume that good will and right motives are a sufficient equipment for public service. When we consider the enormously extended functions of the modern State, the numerous and profound ways in which its activities affect the welfare of all the people, and the consequent complexity of legislating and governing wisely, we see that this notion is utterly mistaken. Only in local governments and subordinate official positions is it true that common honesty plus common sense suffice for those who are charged with the duty of caring for the public welfare. In all the more important legislative and executive officers a considerable amount of special and specific knowledge

[11] *The State and the Church*, p. 263.

is essential to an adequate discharge of official obligations." [12]

Other important duties of public officials are: *fidelity* and *conscientiousness* in fulfilling the particular obligations of their state and *impartiality* in the administration of justice.[13] They should also strive to be models of all other Christian virtues, especially of prudence, mildness, and benevolence. Here, too, what St. Paul says is true, that "love is the fulfilling of the law." [14] If public officials intentionally or out of culpable ignorance violate the rights of the people, or cause them material damage, they are guilty of sin and must make restitution. Thus, for example, a *judge* who, in a gravely culpable way, either because of ignorance or carelessness, has pronounced an unjust judgment, must repair the damage that results therefrom, because he is in duty bound to administer his office fairly and justly. If he has erred without grave fault, he is bound to correct his mistake as far as lies within his power.

"The man who regards public office as an opportunity for private gain, except incidentally and as a necessary consequence of faithful public service, is false to his trust and violates legal justice. To accept a bribe for aid in the enactment of a bad law, for negligent or oppressive administration of the law, or for unjust judicial conduct,

12 Ryan, *op. cit.*, p. 262.

13 Ex. XXIII, 2 sq., 6 sqq.; Lev. XIX, 15, 35; XXIV, 22; Deut. I, 17; XVI, 18 sq.; XXIV, 17; XXV, 1 sq.; Ps. LXXXI, 3 sq.; Is. I, 17; XXXII, 1; LVI, 1; Jer. XXII, 3; Zach. VIII, 16; Wisd. I, 1; Ecclus. XX, 31; Rom. XIII, 3 sq.; Jas. II, 1–9.—St. Augustine, *De Civit. Dei*, l. IV, c. 4: *"Remota iustitia quid sunt regna nisi magna latrocinia? Quia et ipsa latrocinia quid sunt nisi parva regna?"* (Migne, *P. L.*, XLI, 115).—Cicero, *De Offic.*, l. II, c. 11: *"Cuius [iustitiae] tanta vis est, ut ne illi quidem, qui maleficio et scelere pascuntur, possint sine ullo particula iniustitiae vivere."*

14 Rom. XIII, 10; cfr. Zach. VIII, 19; Eph. IV, 15; Col. III, 14.—Sallust, *Iugurth.*, 10: *"Concordia parvae res crescunt, discordiâ maximae dilabuntur."*

is an evident moral wrong. To obtain some advantage on the occasion of proper official actions, for example, through some form of *'graft,'* is likewise a violation of legal justice. Such conduct is generally forbidden by the civil law; at any rate, it renders right judgment and adequate performance of official duties extremely difficult. Public officials are not justified in exposing themselves to such a grave temptation. What is true of their own private advantage, applies also to that of their friends. In their enactment or administration of the law they may not extend favors of any sort to any individual or class of individuals. The common good must be preferred to the good of individuals, and all individuals must be treated with exact justice." [15]

What would become of a State without *justice?* It would fall to pieces, for injustice breeds anarchy, and anarchy causes the disruption of all social bonds. When a State departs from the laws of justice, therefore, it courts destruction.

Every public official ought to be a vessel and an organ for the manifestation of justice within the sphere of his jurisdiction. He must be incorruptible, because justice cannot coexist with bribery. He must be impartial, for without impartiality his judgments would be unjust. He must be unselfish, for selfishness would render him susceptible to bribery. He must be discreet, for without discretion he cannot acquire and hold the confidence either of his superior or of the public. He must be diligent and punctual in the performance of his duties, else he cannot be a model to others. He must be chaste and temperate in all things, for he who is guilty of immoderate indulgence in the pleasures of the flesh can be neither assiduous nor impartial. Where would a slave of lust find the

15 J. A. Ryan, *The State and the Church,* pp. 260 sq.

courage to sacrifice himself for the welfare of his country?[16] He must be a man of superior culture, for without true culture there can be no wisdom, without wisdom no religion, without religion neither justice nor true benevolence.

The most indispensable qualities of a true statesman are: justice, wisdom, incorruptibility, and discretion; and the higher his office, the greater is his responsibility, and the more assiduously should he cultivate these virtues.

As *justice* is the very life and foundation of the State, and its administration is formally entrusted to the *judges,* their duties demand a special treatment.

a) A judge can pronounce official judgment only in matters over which the law gives him jurisdiction.

b) He must be familiar with the law so that he can apply it correctly to the concrete cases submitted for his decision.

c) He must be guided by a firm purpose of administering justice and, therefore, love justice above all things, as the embodiment of the divine will.

d) He must render his decisions according to the letter of the law, but never against its spirit, for this would be to disregard its very essence.

e) He must examine every case without prejudice, and preserve this impartial attitude until he has rendered judgment.

f) He must hear and examine all witnesses who are able and willing to tell the truth, and discount the testi-

16 J. M. Sailer, *Handbuch der christl. Moral,* Vol. III, p. 51, note 1: "History and philosophy both admit the influence of the current immorality on the conduct of public business."—Tacitus says: *"Animo per libidinem corrupto nihil honestum inest."*—Aristotle asks: *"Quid vero interest, utrum feminae gubernent, an qui gubernant, gubernentur a feminis?"*—Cfr. *Polit.,* l. II, c. 9 (*Op.,* II, 1269; III, 629).

mony of those who are incompetent or addicted to falsehood.

g) He must adhere to the prescribed formalities in pronouncing judgment, for they are of the essence of the law.

h) He must protect right and justice against the prejudice and selfishness of minor officials; against interference by unauthorized outsiders; against prevarications on the part of lawyers, and, if necessary, also against usurpation by the rich and by the mob.

All this demands courage, wisdom, and fortitude of an altogether exceptional kind.[17]

Readings.—St. Thomas, *De Regimine Principum,* l. I, c. 15 sqq. —Idem, *Summa Theologica,* 2a 2ae, qu. 67 sqq.—Leo XIII, Encyclical *"Immortale Dei,"* of Nov. 1, 1885; English translation in *The Pope and the People,* London 1912, pp. 71 sqq. and in J. A. Ryan, *The State and the Church,* pp. 1 sqq.—St. Alphonsus, *Theol. Mor.,* l. IV, n. 192 sqq. (ed. Gaudé, II, 625 sqq.).—J. Schwane, *Die Gerechtigkeit,* pp. 177 sqq.—J. M. Sailer, *Handbuch der christl. Moral,* Vol. III, pp. 21 sqq., 50 sqq.—J. P. Gury, S.J., *Comp. Theol. Mor.,* Vol. II, n. 1 sqq.—J. E. Ross, C.S.P., *Christian Ethics,* pp. 415 sq.—H. Noldin, S.J., *Summa Theol. Mor.,* Vol. II, pp. 325 sqq.—Th. Meyer, S.J., *Inst. Iuris Nat.,* Vol. II, pp. 536 sqq., 584 sqq.

17 F. A. Göpfert, *Moraltheologie,* Vol. II, pp. 432 sqq.

SECTION 3

THE DUTIES OF CITIZENS

1. The first duty of a citizen is *obedience* to legitimate authority and to the laws passed by that authority. For, as St. Paul says, he that resists legitimate authority, resists the ordinance of God and purchases for himself eternal damnation.[1]

"The Catholic Church, as well as natural reason, teaches that civil law obliges in conscience. The ultimate basis of this obligation is the natural law; the immediate basis is the authority of the State. Civil laws of importance are gravely obligatory, unless the legislator formally intends their binding force to be slight. The general teaching of moral theologians is that a law is not binding without at least the implicit intention of the legislator. Some civil laws may be purely penal, but their number is probably small." [2]

1 Rom. XIII, 2; cfr. 1 Pet. II, 13–15; Tit. III, 1.—J. P. Gury, S. J., *Comp. Theol. Mor.*, Vol. II, n. 1–18.

2 Ryan, *The State and the Church* Ch. XII, "Moral Obligation of Civil Law," pp. 244–259.—Cfr. Matth. XVII, 23–26; XXII, 21; Rom. XIII, 6 sq.; 1 Pet. II, 17.

Obedience to the law should be inspired by a sincere respect and reverence, which, of course, presupposes confidence in the lawgiver and faith in the sanctity of the law itself—a confidence and a faith which, unfortunately, modern lawgivers themselves too often undermine.

The individual citizen has the duty to employ the rights and liberties he enjoys under the law in a manner conducive to the public welfare. This means that he must choose for himself a useful profession or occupation, conscientiously perform his duties as a member of his family and of the profession and political community to which he belongs, and take part in public affairs according to the measure of his talent, his professional duties, his physical strength, and his material means.

a) The extent to which a citizen is obliged to participate in *politics* depends on the constitution of the particular State to which he belongs and on the answer to the question whether it is necessary for him to make his influence felt in public life in order to safeguard liberty, civilization, and religion. Sometimes the interests of religion require that all good citizens should throw their influence into the political balance, and occasionally the individual citizen is compelled to defend himself against unjust aggression on the part of

the State. In that case, as St. Peter says, "we ought to obey God rather than men." [3]

b) Fidelity to one's country attains its climax in the virtue of *patriotism,* which is one of the noblest forms of charity.

In the natural order, says St. Thomas, "we observe that the part naturally exposes itself to safeguard the whole; as, for instance, the hand is without deliberation exposed to the blow for the whole body's safety. And since reason copies nature, we find the same inclination among the social virtues; for it behooves the virtuous citizen to expose himself to the danger of death for the conservation of the whole State."

And again: "Man becomes a debtor to other men in various ways, according to their various excellences and the various benefits received from them. On both counts God holds first place, for He is supremely excellent and is for us the first principle of being and government. In the second place, the principles of our being and government are our parents and our country, that have given us birth and nourishment. Consequently man is debtor chiefly to his parents and his country, after God. . . . The worship given to our country includes homage to all our fellow-citizens and to all the friends of our country." [4]

3 Acts V, 29.

4 *Summa Theol.,* 1a, qu. 60, art. 5: *"Videmus quod naturaliter pars se exponit ad conservationem totius, sicut manus exponitur ictui absque deliberatione ad conservationem totius corporis. Et quia ratio imitatur naturam, huiusmodi imitationem invenimus in virtutibus politicis. Est enim virtuosi civis, ut se exponat mortis periculo pro totius reipublicae conservatione."—Ibid.,* qu. 101, art. 1: *"Homo efficitur diversimode aliis debitor secundum eorum diversam excellentiam et diversa beneficia ab eis suscepta. In utroque autem Deus summum obtinet locum, qui et excellentissimus est, et est nobis essendi et gubernationis primum principium; secundario vero nostri esse et gubernationis principia sunt parentes et patria, a quibus et in qua nati et nutriti sumus. Et ideo post Deum est homo maxime debi-*

The basis of true patriotism is *loyalty,* which may be defined as "faithfulness and constancy in allegiance and service."

"The genuinely loyal citizen," says Dr. Ryan, "is always ready and eager, not only to obey the laws, but to support and maintain the political institutions of his country. . . . Whether positive or negative, loyalty always implies a certain habitual spirit and attitude toward laws and institutions. It habitually recognizes that a presumption exists in favor of organic and statutory enactments and principles. The loyal citizen is always disposed to give his government and his political institutions 'the benefit of doubt,' and to withhold obedience or support only when the doubt is converted into moral certainty that the laws or the government are in the wrong. In a word, the habitual attitude of the loyal citizen is that of sympathetic faith, not that of criticality and distrust." [5]

Dr. Thomas Wright, in his brochure on *Christian Citizenship,* declares that obedience, respect, and loyalty are the *constituent elements of patriotism,* and Dr. Ryan, who quotes the passage, thinks "this is as satisfactory as any other analysis of the

tor parentibus et patriae. Unde sicut ad religionem pertinet cultum Dei exhibere, ita secundario gradu ad pietatem pertinet exhibere cultum parentibus et patriae. . . . In cultu autem patriae intellegitur cultus omnium concivium et omnium patriae amicorum. Et ideo ad hoc pietas principaliter se extendit."

[5] *The State and the Church,* p. 264.

vague, though apparently elementary sentiment that we call patriotism. The good citizen loves to be acclaimed a patriot," he adds, "and the orator finds patriotism one of the most appealing and popular subjects. Nevertheless, it is very elusive. To the average man it means *love of country,* but what does love of country mean? Not merely love of green fields, lofty mountains, and winding rivers; not always love of existing political institutions. In time of actual or threatened war, the idea of patriotism is very simple. It means support and defense of one's country against armed attack. In time of peace, the phrase, 'love of country,' means many things to many minds. The object of the love may be the physical characteristics of the country, or its economic opportunities, or its government, or its political ideals, or its history, or some combination of these entities. As commonly used, the term patriotism has almost always an international connotation. It appeals to the national consciousness. It brings before the mind the facts of national individuality, separateness, distinctness of interests. It lays stress upon the welfare of one's own country against the welfare of other countries. Too often it takes the form of boasting, *jingoism,* contempt of foreign nations, and identifies the national welfare with national power, *imperialism,* and aggression. The aver-

age citizen frequently confuses patriotism with *national jealousy* and *provincialism.* He does not regularly think of it as having anything to do with internal affairs. Adequate and national patriotism should be quite as active in peace as in war, and it should extend to every matter that affects the common good. If patriotism is love of country, its only rational and concrete meaning is love of the people who inhabit the country and compose the State, in other words, *love of one's fellow citizens.* Therefore, its ultimate object is the same as that of the State, namely, the common good." [6]

c) Of late years, especially in connection with the World War, there has been a recrudescence of pagan patriotism, which is "all the more dangerous because it is untrammelled by any laws of morality. The ancient [Christian] State professed to be scrupulously observant of the laws of justice and fidelity. The modern State adopts the principles of Machiavelli; it acknowledges only one law, the law of success. The watchword 'Germany over all' is not confined to Germany; some in England change it to 'England over all,' and they add another to it, 'England, right or wrong.' A powerful State, fettered by no laws, human or divine, treating its pledged word as only a scrap of paper, commanding the blind obedience of its subjects, becomes a menace to the world." [7]

d) There is another aspect of patriotism to which atten-

6 *Ibid.*, p. 266.

7 Thos. Slater, S.J., in the *Catholic Times,* London and Liverpool, Sept. 16, 1922.

tion should be called, namely, its exploitation by the capitalist class to counteract every movement on behalf of social justice for the laboring people. "Loyalty to the State, or to one's country, to the public weal, does not include belief in, love of, or defense of existing private institutions, industrial or other. The loyalty which is incumbent upon the citizen, as citizen, concerns only political institutions and relations. The organized attempt to make it apply to the economic order, is one of the most extraordinary and brazen performances in the history of human selfishness." [8] Most perversions and exaggerations of the duty of loyalty are inspired by selfishness and greed.

e) Catholics should uphold the true concept of patriotism both in theory and practice. They should remember that, in the words of Archbishop John Lancaster Spalding, "there is a higher love than love of country,—the love of truth, the love of justice, the love of righteousness; and he alone is a patriot who is willing to suffer obloquy and the loss of money and friends, rather than betray the cause of truth, justice, and righteousness, for only by being faithful to this can he rightly serve his country. . . . The American's loyalty to his country is first of all loyalty to truth, to justice, to humanity. He feels that its institutions can be enduring only when they are founded on religion and morality. . . . If a nobler race is to spring forth in this new world, all the influences that are active and potent in the national life must conspire to form *public opinion,* by which in the end we are ruled,—a public opinion which shall be favorable to pure religion, to the best education, and to sound morality. The better kind,

[8] J. A. Ryan, *The State and the Church,* p. 365.

however otherwise they may disagree, must unite and support one another in ceaseless efforts to create such a public opinion." [9]

2. Genuine Christianity demands that the nations which are politically separated should unite in the higher unity of religion, since in the kingdom of God we are taught to look forward to a time when humanity will constitute one fold under one shepherd. There is a *Christian internationalism* which does not aim to abolish the virtue of patriotism, but rather to ennoble it and free it from the fetters of egotism and national hate. The unbroken tradition of the papacy with respect to international harmony and peace has been worthily continued to the present time. Pope Benedict XV, during the recent World War, not only made all possible efforts to stop hostilities, but was also one of the first advocates of an *international organization for the preservation of peace.* In his letter to the American people, Dec. 31, 1918, he expressed his fervent hope and desire for an international organization "which, by abolishing conscription will reduce armaments, by establishing international tribunals will eliminate or settle disputes, and by placing peace on a solid foundation, will guarantee to all independence and equality of rights." [10]

[9] *Opportunity and Other Essays,* Chicago, 1899.

[10] J. A. Ryan, *The State and the Church,* p. 324.

3. In most countries to-day the people govern themselves by electing their own lawgivers, judges, and executive officers. Hence a second class of duties incumbent on the citizen results from his *functions as an elector*. The right to vote has for its corollary a special *duty*, and this duty is one of legal justice. "The citizens are bound to promote the common good in all reasonable ways. The franchise enables them to further or hinder the common weal greatly and fundamentally, inasmuch as the quality of the government depends upon the kind of officials they elect. Not only questions of politics, but social, industrial, educational, moral and religious subjects are regulated by legislative bodies and administered by executive. Therefore, the matter is of grave importance, and the obligation of the citizen to participate in the election and to support fit candidates is correspondingly grave." [11]

a) To omit to vote in an important election without a grave cause, such as the loss of one's means of livelihood, is a sin. It may even be a mortal sin, namely, if one's abstention is the cause of others neglecting to vote, for in that case the careless citizen would be responsible for the election of dishonest or incompetent officials, the passing of unjust laws, or neglect to pass measures which are necessary for the public welfare.[12]

11 *Ibid.*, p. 271. 12 *S. Pocnit.*, 1 Dec. 1866.

When there is no hope of electing an honest representative, and no reason to fear that the one elected will cause serious injury to Church or State, *abstention from voting* cannot be regarded as a mortal sin; in fact it may not even be a venial sin if inspired by the desire to avoid grave personal injury or inconvenience.

If an election seems to involve the recognition or promotion of an illegitimate government, it may be unlawful or at least inadvisable to take part in it.

b) To vote for a candidate who is known to harbor pernicious principles, is *per se* illicit and, broadly speaking, a sin against justice. Would the fear of a grave personal loss or inconvenience excuse one in a case of this kind? If the election is certain to go one way, no matter how I vote, I may abstain from voting, or, if I am compelled to vote for the wrong man, I should strive to avert scandal by explaining that I cast my vote under compulsion. To vote for a candidate for the legislature, State, municipal, or national, is in itself an indifferent act, and no one can predict with certainty what attitude the candidate will take after the election.

Material co-operation in the election of a bad candidate may be excused by any grave reason.

When of two candidates running for office neither is likely to promote the principles of justice, it is licit to vote for the less objectionable of the two if this appears necessary to prevent the election of the more

objectionable one, but only on the following conditions:

α) The danger of scandal must be removed by a declaration stating the reasons for the act;

β) Participation in the election must really be necessary to prevent the triumph of the objectionable candidate.

c) A Catholic who possesses all the qualifications necessary for a public office may be in duty bound to become a candidate for that office, namely, if his election is certain, if he can accept the office without grave inconvenience to himself, and if no other equally competent candidate is available.[13]

d) A *legislator* is never allowed to vote for a law which he recognizes as bad and unjust. If it is necessary to accept certain objectionable stipulations in order to get an otherwise good law passed, or to prevent greater evil, he may vote for those stipulations, provided they involve no direct wrong, but should do so under protest.

Legislators furthermore have the duty of preventing the passage of unjust laws by diligently attending the sessions and voting whenever an opportunity offers. They owe this duty to their constituents. If by culpable absence or abstention from voting they become responsible for the passage of obnoxious bills, they are liable for the damage done to the community, to their constituents as well as to any others who may be injured. They are in duty bound to promote the public welfare of the community also in a positive way, especially by represent-

13 Noldin, *De Praeceptis,* pp. 336–339.—Dr. Ryan (*The State and the Church,* p. 275) thinks that "in as much as the issues involved in such a situation are of much graver consequence than those dependent upon the ballot of the private citizen, the man who refuses to become a candidate for office will need a much graver reason to excuse him than will the citizen who merely neglects to vote."

ing the interests of their voters if they have expressly promised to do so.[14]

e) The duty to *vote for the common welfare* instead of for the benefit of private persons or groups is too often forgotten even by well-meaning citizens, who will give their support, for instance, to a friend, or to a member of their own race or religion who has not the required moral or intellectual equipment for the office he seeks or who upholds socially harmful policies. "Too often in such situations," says Dr. Ryan, "the honest citizen salves his conscience with the excuse that the opposing candidate 'is just as bad.' Where this is the fact one might legitimately determine one's choice on the basis of personal friendship, or racial or religious affiliation, or other extrinsic considerations; but the general fact is that voters who adopt this course do not take adequate care to find out whether the candidate of the opposition is in reality 'just as bad.' They too easily decide the question on the basis of their inclinations and predilections." [15]

On another unjustifiable practice, that of ignoring *principles* and *policies* in the exercise of the franchise, the same able writer says: "'Vote for a good man, regardless of party,' is a plausible but essentially inadequate political rule. A distinction should be drawn between legislative offices and those which are merely administrative. In choosing a city treasurer or a city auditor, the only pertinent qualifications are honesty, intellectual capacity, and technical equipment. There is involved no question of legislative policy. When the office to be filled is that of governor of a State, president of the United States, member of a State legislature, or congressman, other

14 Göpfert, II, 447 sq.; Scavini-Del Vecchio, *Theol. Mor. Universa,* Vol. I, 3rd ed., n. 332.

15 *The State and the Church,* pp. 271 sq.

qualifications are essential in addition to those just mentioned. The 'good man' may have some very harmful views concerning political and industrial policies. He may sincerely favor national imperialism and jingoism, or legislation to promote the undue aggrandizement of one social class or the oppression of another social class. Obviously the citizen does not fulfill his duty when he votes for a 'good man' of this sort. Sometimes the common welfare will suffer less through the election of a man whose political policies are right but whose moral or intellectual equipment is deficient, than through the elevation of a 'good man' who gives his adhesion to wrong policies." [16]

f) Excellent advice to citizens in regard to the duties of voters is contained in a letter addressed by the late Cardinal Amette, Archbishop of Paris, to his people in 1921:

"In the joint letter which they recently addressed to the French Catholics, the bishops of France said: 'It is a duty of conscience for all citizens honored with the right of suffrage to vote honestly and wisely with the sole aim of benefitting the country. The citizen is subject to the divine law as is the Christian. Of our votes, as of all our actions, God will demand an account. The duty of voting is so much the more binding upon conscience because on its good or evil exercise depend the gravest interests of the country and of religion.' It is your duty to vote. To neglect to do so would be a culpable abdication of duty on your part. It is your duty to vote *honestly;* that is to say, for men worthy of your esteem and trust. It is your duty to vote *wisely;* that is to say, in such a way as not to waste your votes. It would be better to cast them for candidates who, although not giving complete satisfaction to all our legitimate demands, would lead us

[16] *Ibid.*, p. 272.

to expect from them a line of conduct useful to the country, rather than to cast your vote for others whose programme would indeed be more perfect, but whose almost certain defeat might open the doors to the enemies of religion and of the social order." [17]

g) Tanquerey [18] points out that, in order to possess the specific knowledge required to vote intelligently and rightly, upright citizens should organize and participate in *political organizations*. Dr. Ryan approves this advice. "Men unite in trade unions, manufacturers' associations, chambers of commerce, and professional societies of various kinds for the promotion of their economic interests. Hundreds of thousands of good men, thus occupationally organized, fail to see the necessity of organizing politically for the protection of their civic interests and the effective performance of their duties to the commonwealth. The conduct of political organizations they leave to professional politicians, who are usually in the service of selfish private interests. When the inactive citizens see the evil results of this arrangement, they attempt to justify their aloofness by the reflection that politics is essentially corrupt. This *lazy pessimism* is not warranted by anything inherent in political affairs. It represents a vain attempt to evade moral responsibility. If politics is rotten, a large part of the responsibility rests upon well meaning but indolent citizens." [19]

4. The citizens of a country owe particular respect and reverence to the higher administrative officials to whom is entrusted the execution of the laws. These are the servants and representa-

17 Quoted *ibid.*, pp. 273 sqq.
18 *Synopis Theol. Mor. et Past.*, Vol. III, pp. 475 sq.
19 Ryan, *op. cit.*, p. 274.

tives of God, and even if they do not always do their duty, they must be honored because of the exalted office they hold. Reverence for the highest representative of the State, whether he be king or president, is allied to the worship of God, for St. Peter says: "Fear God; honor the king." [20] And Leo XIII: "Hallowed in the mind of Christians is the very idea of public authority, in which they recognize some likeness and symbol as it were of the Divine Majesty, even when it is exercised by one who is unworthy." [21] In addition the Christian citizen should pray for those in high station, in order that "we may lead a quiet and a peaceable life in all piety and chastity." [22]

20 Rom. XIII, 4–6; 1 Pet. II, 17. —Tertullian, *Ad Scap.*, c. 2: *"Christianus nullius est hostis, nedum imperatoris, quem sciens a Deo suo constitui necesse est, ut et ipsum diligat et revereatur et honoret et salvum velit. . . . Colimus ergo et imperatorem sic, quomodo et nobis licet et ipsi expedit ut hominem a Deo secundum et quidquid est, a Deo consecratum, solo Deo minorem."* (Ed. Leopold, P. I, 248).—St. Justin Martyr, *Apol.*, l. I, n. 17.—Athenagoras, *Supplic.*, c. 1, n. 17.—Theophilus of Antioch, *Ad Autol.*, l. I, c. 14.—St. Augustine, *Enarrat. in Ps.*, CXXXIV, n. 7: *"Milites christiani servierunt imperatori infideli; ubi veniebatur ad causam Christi, non agnoscebant nisi illum, qui in caelo erat. . . Distinguebant Dominum aeternum a domino temporali, et tamen subditi erant propter Dominum aeternum etiam domino temporali."* (Migne, *P. L.*, XXXVII, 1654).

21 Encycl. *"Sapientiae Christianae,"* Jan. 10, 1890: *"Sanctum igitur christianis est publicae potestatis nomen, in qua divinae maiestatis speciem et imaginem quandam tum etiam agnoscunt, quum geritur ab indigno."*

22 1 Tim. II, 1 sq.—Tertullian, *Apol.*, c. 30: *"Nos pro salute imperatorum Deum invocamus aeternum, Deum verum, Deum vivum, quem et ipsi imperatores propitium sibi praeter ceteros malunt. Sciunt, quis illis dederit imperium; sciunt, qua homines, quis et animam; sentiunt, eum Deum esse solum, in cuius solius potestate sunt, a quo sunt secundi, post quem primi, ante omnes et super omnes deos."* (Ed. Leopold, I, 101 sq.)—Idem, *Ad*

"Let those who assert that Christianity is opposed to the public welfare," says St. Augustine, "provide us with soldiers such as Christian doctrine demands, with subjects, husbands, wives, parents, children, masters, servants, kings, judges and, finally, taxpayers and tax collectors such as they ought to be according to Christian standards, before they dare to assert that Christian teaching runs counter to the welfare of the State. [If they are honest] they will, on the contrary, not hesitate to admit that the Christian religion, when obeyed, is apt to promote the public welfare in a high degree. The Catholic Church instructs the little children in a manner adapted to their understanding; she teaches the boys and young men with power; she speaks to the old in a manner becoming their age and state of mind. She subjects the wife in faithful obedience to her husband, not as a tool of lust, but for the propagation of the race and the community of domestic life. She appoints man the head of woman, not to abuse the weakness of her sex, but to exercise her in the duty of sincere affection. She makes children subject to their parents in a sort of voluntary servitude and constitutes parents as the affectionate masters of their children. . . . She unites citizen with citizen, nation with nation, and the whole race of men in memory of their common progenitors, not merely for sociability, but also in a kind of brotherliness. She teaches kings to provide for their peoples, and exhorts nations to be obedient to their rulers. She points out particularly to whom honor is due, to whom love, to whom respect, to whom

Scap., c. 2: *"Sic* [*imperator*] *omnibus maior est, dum solo vero Deo minor est; sic et ipsis diis maior est, dum et ipsi in potestate sunt eius. Itaque sacrificamus pro salute imperatoris, sed Deo nostro et ipsius, sed quomodo praecepit Deus, pura prece. Non enim eget Deus, conditor universitatis, odoris aut sanguinis alicuius."* (*Ibid.*, 248).— Cfr. Pius IX, Encycl. *"Etsi multa luctuosa,"* Nov. 21, 1873 (Denzinger-Bannwart, n. 1841).

fear, to whom consolation, to whom admonition, to whom warning, to whom instruction, to whom censure, to whom punishment, at the same time pointing out that not everything is due to everyone, but love is due to all, injustice to none." [23]

Let both powers instituted by God, Church and State, each supreme in its own particular sphere,[24] co-operate harmoniously for the welfare of humanity and the honor of God. Dante justly says that true religion makes for good government—

"La sana religione fa sano il governo."

READINGS.—J. M. Sailer, *Handbuch der christl. Moral,* Vol. III, pp. 40 sqq.—K. Werner, *System der christl. Ethik,* Vol. III, pp. 609 sqq.—J. Schwane *Die Gerechtigkeit,* pp. 181 sqq.—F. X. Linsenmann, *Lehrbuch der Moraltheologie,* pp. 625 sqq.—J. A. Ryan, "The Duties of the Citizen," in *The State and the Church,* New York 1922, pp. 260–275.—J. A. Lapp, *The Catholic Citizen,* N. Y. 1922.—Ad. Tanquerey, S.S., *Synopsis Theol. Mor. et Past.,* Vol. III, pp. 475 sqq.—Theo. Meyer, S.J., *Inst. Iuris Nat.,* Vol. II, pp. 480 sqq.

23 St. Augustine, *Epist.,* 138 (*al.* 5), c. 2, n. 15 (Migne, *P. L.,* XXXIII, 532.—IDEM, *De Moribus Eccl. Cath.,* l. I, c. 30, n. 63 (*P. L.,* XXXII, 1336).—St. Ambrose, *De Offic.,* l. III, c. 9, n. 59: *"Si non potest alteri subveniri, nisi alter laedatur, commodius est neutrum iuvari quam gravari alterum. . . . [Sacerdotis] est igitur nulli nocere, prodesse velle omnibus; posse autem solius est Dei."* (*P. L.,* XVI, 162).

24 Cfr. Leo XIII, Encycl. *"Immortale Dei,"* Nov. 1, 1895: *"Deus humani generis procurationem inter duas potestates partitus est, scilicet ecclesiasticam et civilem, alteram quidem divinis, alteram humanis rebus praepositam. Utraque est in suo genere maxima: habet utraque certos quibus contineatur terminos eosque sua cuiusque natura causaque proxima definitos: unde aliquis velut orbis circumscribitur, in quo sua cuiusque actio iure proprio versetur."*

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